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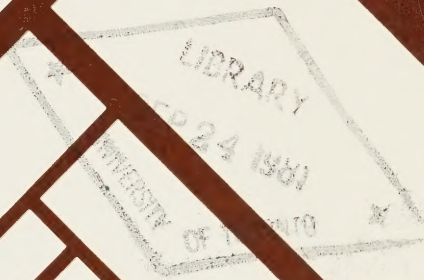




Ontario  
Labour Relations  
Board

# Annual Report 1980-81"

CA20N  
LR  
-A56





# ONTARIO LABOUR RELATIONS BOARD

<i>Chairman</i>	GEORGE W. ADAMS
<i>Alternate Chairman</i>	K.M. BURKETT
<i>Vice-Chairmen</i>	G.G. BRENT E. NORRIS DAVIS RORY F. EGAN D.E. FRANKS R.A. FURNESS R.D. HOWE R.O. MACDOWELL M.G. MITCHNICK M.G. PICHER P.C. PICHER N. SATTERFIELD I.C.A. SPRINGATE
<i>Members</i>	H.J.F. ADE D.B. ARCHER B.L. ARMSTRONG T.G. ARMSTRONG C.A. BALLENTINE J.D. BELL C.G. BOURNE E.J. BRADY W.G. DONNELLY M. EAYRS M.J. FENWICK W.H. GIBSON A. GRIBBEN L. HEMSWORTH A. HERSHKOVITZ O. HODGES R.D. JOYCE H. KOBRYN B.K. LEE S.H. LEWIS F.W. MURRAY P.J. O'KEEFFE R. REDFORD J.A. RONSON M.A. ROSS W.F. RUTHERFORD H. SIMON W. H. WIGHTMAN J.P. WILSON N.A. WILSON

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<i>Registrar</i>	D.K. AYNSLEY
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<i>Solicitor</i>	HARRY FREEDMAN
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LR  
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**ONTARIO  
LABOUR RELATIONS BOARD**

**ANNUAL REPORT  
1980-81**





LABOUR RELATIONS BOARD  
ONTARIO

APPEAL BOARD  
1986



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## MESSAGE of THE CHAIRMAN



It gives me great pleasure to introduce the Board's first ANNUAL REPORT. The publication provides an excellent overview of the Board's activities during fiscal year 1980-81. It also contains a helpful summary of the Board's structure and biographical sketches of members and vice-chairmen. I congratulate our solicitors for the obvious effort required to assemble the document – a responsibility that will now reside with Solicitor's Office on an ongoing basis.

Fiscal year 1980-81 was marked by an ever increasing caseload matched by the increasing effectiveness of the Board's labour relations officers in achieving settlements. Without their good offices and the equally important good faith efforts of the parties, the Board would require substantially more resources to process the matters before it with the same expedition. Moreover, the Board is committed to settlement activity as the preferable method for resolving labour relations conflict. On the other hand, fiscal year 1980-81 continued to witness an unfolding of new and more extensive remedies for unfair labour practice violations evidencing the Board's dedication to a serious enforcement of important statutory rights. Vice-Chairmen and Board Members provided thoughtfully reasoned decisions in a number of important cases, the highlights of which are reviewed in this report. In my opinion, their work over the previous years demonstrates why this Board continues to be one of the most highly respected administrative agencies in the country.

The year also saw the introduction of new internal administrative arrangements aimed at greater effectiveness in case monitoring and processing; a refinement of the Board's waiver of hearing certification program; an expansion of staff development programs; and the initiation of a number of co-operative activities with labour and management groups. The Board and the Labour Law Subsection of the Ontario Branch of the Canadian Bar Association jointly sponsored a lecture by John Fanning, Chairman of the U.S. National Labour Relations Board, at the Subsection's meeting held in December, 1980. I am also very pleased with the success of the cross-assignment program with labour and management involving our labour relations officers. These exchanges have provided new insights and awareness to the individual participants as well as to the participating organizations. All signs point to a continuation of these activities. A related exchange with the Conciliation and Mediation Branch of the Ministry of Labour has proved equally successful.

On behalf of the Board I want to thank all members of the staff for their vital support over the past year and the labour/management community for its continuing co-operation.

George W. Adams  
Chairman





## I INTRODUCTION

This is the first time, since its inception that the Ontario Labour Relations Board has published its own Annual Report. In previous years, the only review of the Board's activities has been by way of a brief note in the Ontario Ministry of Labour Annual Report.

In view of the ever-expanding role played by the Board and its increasing work-load, there is a need for more substantial information on its yearly progress. This Annual Report is intended to fill such a need. The first volume covers the fiscal year April 1, 1980 to March 31, 1981.

The main purposes of the Board's Annual Report are: to provide a statistical summary of the work-load carried by the Board during the year; to highlight some of the more important decisions of the Board; and to provide a brief report of court activity involving Board proceedings or Board orders. The Report will also contain up-to-date information on the organization of the Board, its personnel, and administrative developments that may be of interest to the public.

Since this is the first Board Annual Report, it contains a brief account of the history and development of *The Labour Relations Act*, as it affected the development of the Ontario Labour Relations Board.

## II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of public hearings before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

"... the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board, (1978), 1 Advocate's Quarterly 198 at 200.

The Act contained several features which are standard in labour relations legislation today – management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers – something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration, and, when the disputes arise in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June, 1943, and heard its last case in April, 1944). In his book, *The Ontario Labour Court 1943 - 1944*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise:-

"... the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a wartime move by the Federal Government to centralize labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over “property and civil rights.” (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5)

The Act was subsequently narrowed so as to encompass only those industries within the Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, “opt in” to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the federal Wartime Labour Relations Board. The chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c.51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Acts* and empowered the Lieutenant-Governor in Council to make regulations “in the same form and to the same effect as that . . . Act which may be passed by the Parliament of Canada at the session currently in progress. . . .” This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board’s role was fairly limited. There was no enforcement mechanism at the Board’s disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lockout unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary to the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.



Thus, outside of granting certifications and decertifications, the Board's power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

*The Labour Relations Amendment Act, 1960*, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" ("*Report of The Royal Commission on Labour Management Relations in the Construction Industry*," March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" ("*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario*," May, 1976). (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31.) Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, the Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders

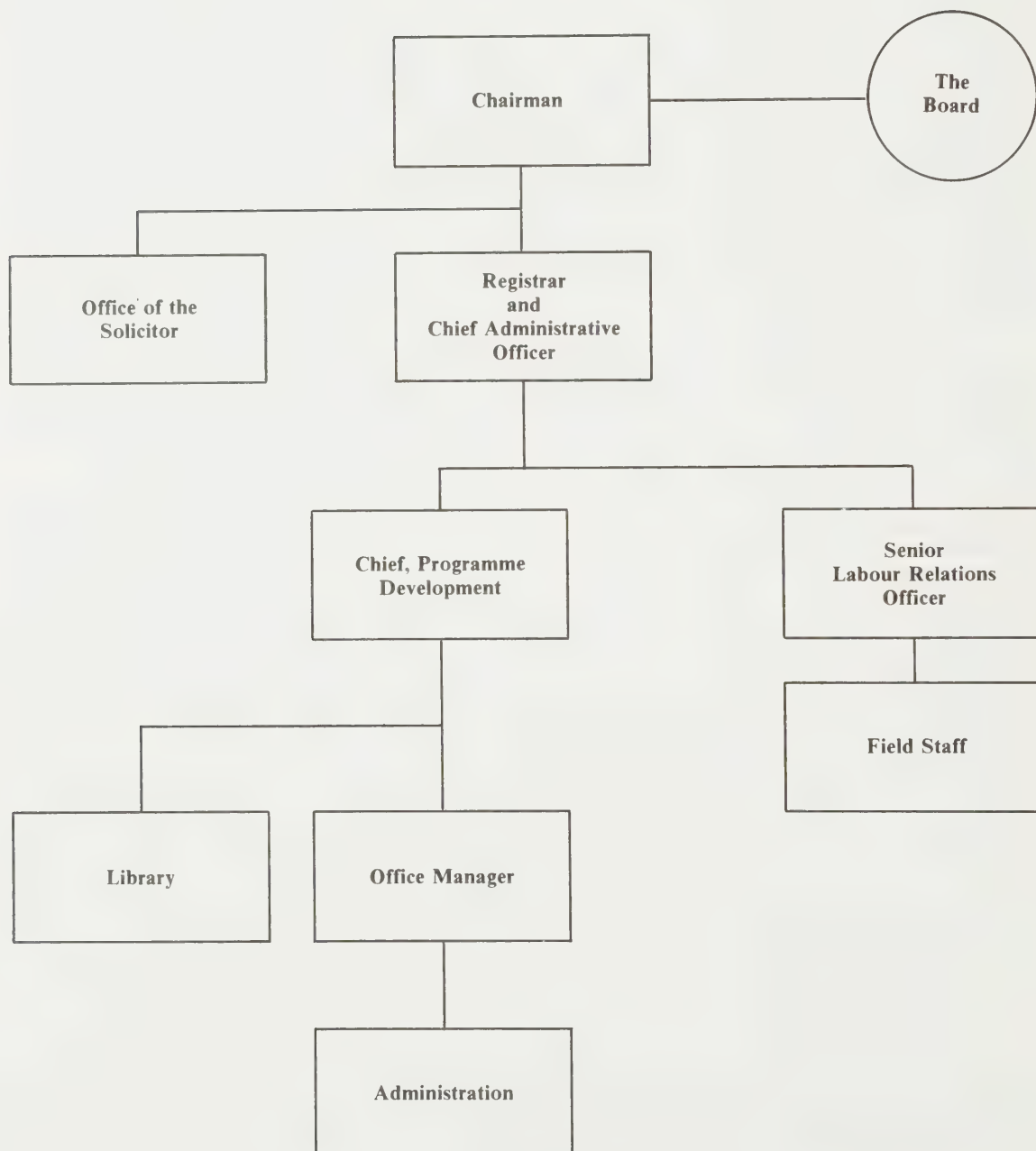
was in the case of a breach of the newly created “duty of fair representation.” This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make “cease and desist” orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and enforceable as orders of the Court.

A major increase in the Board’s remedial powers under *The Labour Relations Act* occurred in 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of *The Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board’s remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make “cease and desist” orders with respect to any unlawful strike or lock-out. It was in 1975 as well, that the Board’s jurisdiction was extended through section 112a, to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, *The Labour Relations Amendment Act, 1980 (No. 2)*, S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in the bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in the bargaining unit on their employer’s final offer at the request of their employer.

### III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:





## IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to *The Labour Relations Act* as follows:

“...it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as unfair labour practices, unlawful strikes and lock-outs and jurisdictional disputes. In order to carry out this mandate the Board is composed of a Chairman and an Alternate Chairman, several Vice-Chairmen and a number of Members representative of labour and management respectively in equal numbers. These appointments are made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 95(1) of *The Labour Relations Act*, R.S.O. 1970, c. 232, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not appealable and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See, *The School Boards and Teachers Collective Negotiations Act*, S.O. 1975, c. 72 and *The Colleges Collective Bargaining Act*, S.O. 1975, c. 74. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. The Board is also given an important role under *The Occupational Health and Safety Act*, 1978, S.O. 1978, c. 83.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following sections: (a) Administrative Division, (b) Field Services and (c) Office of the Solicitor.

## **(a) ADMINISTRATIVE DIVISION**

The Registrar and Chief Administrative Officer is the senior administrative official of the Board. He is responsible for supervising the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings, the holding of votes or particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, constraints on its access to public funds, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload, within the resource parameters set for it, underpins much of its contribution to labour relations harmony in this province.

The Chief, Programme Development and the Senior Labour Relations Officer report directly to the Registrar and Chief Administrative Officer. The former manages the day-to-day administrative operation and the latter the field services. An Administrative Committee comprised of the Chairman, Alternate Chairman, Registrar and Chief Administrative Officer, Chief, Programme Development, Senior Labour Relations Officer and Office Manager meets monthly to discuss all aspects of Board administration and management.

The administrative areas of the Board, include: office management, case monitoring, and library.

### **1. Office Management**

An administrative support staff of approximately 63 people, headed by an Office Manager who reports to the Chief, Programme Development, and a senior clerical supervisor, processes all the applications received by the Board.

Four primary sections deal with applications:

- (1) The certification section handles all applications for certification, termination and accreditation.
- (2) The sundry section processes all other applications including unfair labour practice complaints, grievances in the construction industry and illegal strike and lock-out proceedings.
- (3) The vote section deals with all representation votes.
- (4) The clerks section reviews evidence in support of, or opposition to, trade unions filed with the Board in certification and termination applications and prepares the material necessary for the Board to conduct hearings and when necessary, attends hearings to assist the Board.

The bulk of the Board's caseload is made up of applications for certification, unfair labour practice complaints and referrals to arbitration of construction industry grievances. In this fiscal year the Board received a total of 2,836 applications and complaints.

The Registrar's office is responsible for setting hearing dates for all cases and maintaining and up-to-date availability roster of all Vice-Chairmen and Board Members for scheduling purposes. To assist the Registrar with these duties the Board has recently created the position of Registrar's Clerical Assistant.

## **2. Case Monitoring**

Because delay in case handling directly affects the Board's objective of disposing of all cases as quickly and efficiently as possible, a case monitoring and control system was developed in fiscal year 1980-81. The control system was initiated after studying a representative period and assessing how long the average case should take at each stage of its processing, from application to disposition. Control dates have been established at each stage of processing for different types of cases.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide vital statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can lead to increased productivity and better service to the community.

## **3. The Library**

The Ontario Labour Relations Board library employs a full-time professional librarian and a library technician to manage a collection of approximately 750 texts, 150 journals and 25 case reports in areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The collection includes decisions from other jurisdictions, including the Canada Labour Relations Board, the National Labour Relations Board and provincial labour boards from across Canada.

The library staff provides research services for Board staff and assists the library users.

A card index to the Board's monthly Decision Report provides easy access to reported decisions by case name, subject, statute, file number and cases considered.

### **(b) FIELD SERVICES**

The Board believes that the objects of the Act are best served if labour relations disputes are resolved on the basis of mutual accommodation between the parties. Towards this end, the Board provides settlement assistance to the parties in most matters brought before it. Seventeen highly skilled Labour relations Officers, under the direction of a Senior Labour Relations Officer, provide this service. Five of the most experienced officers have been appointed group leaders in order to assist the Senior Labour Relations Officer with the administration of this section.



1,490 case assignments were made to Labour Relations Officers in fiscal year 1980-81. The assignment load increased by some 321 cases in fiscal 1980-81 over fiscal 1979-80. The complement of officers remained unchanged over the year.

The assignments made to Labour Relations Officers fall into four broad categories:

## **1. Certification**

The Board holds to the view that the less confrontation and formal disagreement occasioned by an application for certification, the better the atmosphere for the negotiation of the first agreement. In keeping with this view, the Board has moved to make greater use of its settlement officers in certification proceedings.

### **(i) Waiver of Hearing**

The Board instituted a waiver of hearing procedure in respect of certification applications in fiscal year 1980-81. Under this procedure a Labour Relations Officer is assigned responsibility for reviewing the filings in each application and, in conjunction with the Senior Labour Relations Officer, making an assessment as to which cases appear to be uncontested. Where the parties appear to be in agreement, or close to it, with respect to the description of the bargaining unit, and where there are no discrepancies with respect to the documentary evidence filed with the application, the Labour Relations Officer contacts the parties to ascertain if it is necessary to hold a formal hearing. In those cases where the parties agree to waive a hearing, the application is disposed of on the basis of the materials and evidence filed with the application. In fiscal year 1980-81 the parties were contacted in 269 cases and given the opportunity to waive a formal hearing. In 205 cases, or 76% of the cases considered to be appropriate for waiver, no formal hearing was required.

### **(ii) Hearing Day Activity**

The Board hears all certification applications on the same day of the week so as to facilitate its settlement efforts. A team of Labour Relations Officers, under the direction of the Senior Labour Relations Officer and a group leader, are assigned to certifications each week. These officers are briefed as to the contentious issues in the 20 to 25 certification applications scheduled to be heard by the Board each week and assigned individual cases. They attempt to resolve disputes related to the identity of the employer, the description and composition of the bargaining unit, and the number of employees within the bargaining unit. 182 of the 292 cases assigned to officers on the day of the hearing in fiscal year 1980-81 were disposed of on the basis of agreements between the parties.

(iii) Examinations:

In those certification cases where the parties are unable to identify the employer, or to agree on the scope or composition of the bargaining unit, or on the number of employees coming within the bargaining unit, a Labour Relations Officer is usually appointed to meet with the parties subsequent to the hearing day and inquire into the matters in dispute. The inquiry takes the form of a hearing chaired by the Labour Relations Officer. The Officer calls and examines witnesses who have knowledge of the matters in dispute. The parties are given the opportunity to cross-examine the Board's witnesses and to call their own, if they wish. The evidence is transcribed on tape and a record compiled for use by the Board in making its determination. 247 examination assignments were made to Labour Relations Officers in fiscal year 1980-81. 94 reports were submitted to the Board. In the remaining 153 cases the issues in dispute were settled with the assistance of the officer during the course of the inquiry so that a formal report was not required.

## 2. Unfair Labour Practices:

Each unfair labour practice complaint filed with the Board is scheduled for hearing within 28 days of the date of filing and assigned to a Labour Relations Officer. The Labour Relations Officer is responsible for assisting the parties to resolve the dispute and in so doing works to the time limit established by the fixed hearing date. 736 unfair labour practice assignments were made to Labour Relations Officers in fiscal year 1980-81, up 139 assignments over the previous year. The Board's officers provide settlement assistance in a wide range of unfair labour practice complaints including:

- alleged discriminatory treatment (including discharge from employment) for union activity.
- alleged bargaining in bad faith.
- alleged unlawful strikes and lock-outs.
- alleged breaches of the duty of fair representation.

With the Board moving to more complex and far-reaching remedies in unfair labour practice cases, the role of the Labour Relations Officer has been expanded to include a post-hearing involvement. For the first time Labour Relations Officers were assigned to assist the parties with the implementation of Board remedial orders in fiscal year 1980-81.

The effectiveness of the Board's officers is attested to by the fact that 80% of the unfair labour practice complaints filed with the Board in 1980-81 were resolved between the parties without the need for a formal hearing.

### **3. Construction Industry Grievances:**

The Act was amended in 1975 to provide that either party to a construction industry collective agreement could refer a grievance concerning the interpretation, application, administration, or alleged violation of the agreement to the Board for final and binding determination. The number of such grievances referred to the Board has grown steadily and reached 507 in fiscal year 1980-81. A Labour Relations Officer is assigned to meet with the parties in each of these cases and attempts to mediate a settlement to the dispute. 90% of the construction industry grievances disposed of by the Board in 1980-81 were resolved, with the assistance of an Officer, without the need for a formal hearing.

Approximately 80% of the matters coming before the Board this year were disposed of with the assistance of a Labour Relations Officer and without the need for a hearing. In response to a case load growing in both volume and complexity, the Board's field staff provided the basis for the overall level of performance of the Board in fiscal year 1980-81. More importantly, during this period the Board's field staff made a marked contribution to sound and harmonious labour relations within the province.

#### **(c) OFFICE OF THE SOLICITOR**

The Office of the Solicitor, under the direction of the Senior Solicitor of the Board, reports directly to the Chairman. A solicitor assists the Senior Solicitor in carrying out the functions of this office. In addition, each year the Board employs several articling law students to assist in the solicitors' work.

The Office of the Solicitor is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chairman, Vice-Chairmen and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Office of the Solicitor is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the Office of the Solicitor. When preparation or revision of practice notes, Board Rules or forms become necessary, the Office of the Solicitor is responsible for undertaking those tasks.

The Senior Solicitor is active in the staff development programme of the Board and the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, the solicitors prepare written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The Senior Solicitor also advises the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Office of the Solicitor is the representation of the Board's interest in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is



retained to represent the Board, the Senior Solicitor in consultation with the Chairman, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Office of the Solicitor is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

The Office of the Solicitor maintains an information service through which any person may obtain, by telephone, general information relating to *The Labour Relations Act*, the Regulations, procedures and practices of the Board, and other related legislation. It is also possible for a member of the public to obtain such information at a personal interview with a member of the Board's legal staff. The solicitors also receive and respond to written inquiries coming from the public.

The Office of the Solicitor is responsible for the publication of the Ontario Labour Relations Board Report, a monthly series of selected Board decisions which commenced in 1944. The Senior Solicitor is Editor of this publication. That office also produces a publication titled "A Guide to the Ontario Labour Relations Act", which is an explanation in laymen's terms, of the major provisions of the Act. The solicitors of the Board are responsible for the periodic revision of this publication. Commencing with this first issue, the Office of the Solicitor has also undertaken the responsibility for the preparation of the Board's Annual Report.

### **Board Personnel**

In the year under review, the Board consisted of the following persons:

GEORGE W. ADAMS                      *Chairman*

Appointed Chairman of the Ontario Labour Relations Board effective September 1, 1979, Mr. Adams holds degrees of B.A. (McM) 1967, LL.B. (Osgoode, with honours) 1970, and LL.M. (Harvard 1971). His professional background includes: law professor at Osgoode Hall Law School, 1971-78; Vice-Chairman Ontario Labour Relations Board, 1974-75; Assistant Deputy Minister of Labour, Province of Ontario, 1975-77; Vice-Chairman, Ontario Education Relations Commission, 1977-79; Chairman, Ontario Grievance Settlement Board 1977-79; and private practitioner with a Toronto law firm, 1978-79. Mr. Adams is the author of numerous books, monographs and articles, the majority of them relating to labour law. He is an experienced arbitrator, mediator and fact-finder. In the year under review, he acted as special counsel to the Minister of Labour in evaluating criticisms of *The Labour Relations Amendment Act, 1979 (No. 2)* (Bill 204). His report to the Minister was followed by the passage of *The Labour Relations Amendment Act, 1980* (Bill 73). He is a member of the National Academy of Arbitrators and the Law Society of Upper Canada.

KEVIN M. BURKETT                      *Alternate Chairman*

Mr. Burkett has served as the Board's Alternate Chairman since September of 1979. He was first appointed as a Vice-Chairman of the Board in November of 1975. Mr. Burkett, who holds B.A. and M.B.A. degrees from the University of Toronto, has had much varied experience in industry, trade unions and government prior to joining the Board. Having served as the Research Director/Negotiator of the Civil Service Association of Ontario

(predecessor to the Ontario Public Service Employees Union), from 1968 to 1970, he was appointed a mediator in the Ontario Ministry of Labour in 1970. In 1973 he joined Ontario Hydro as Senior Industrial Labour Relations Officer, a post he held until his appointment to the Board. Mr. Burkett is an experienced arbitrator, mediator and fact-finder, both in the private and public sectors and has experience as a third party neutral in negotiations involving Ontario teachers and the Metropolitan Toronto Police. Mr. Burkett spent most of this fiscal year on a leave of absence from the Board while serving as the Chairman of the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mining Plants in Ontario.

**GAIL G. BRENT** *Vice-Chairman*

A part-time Vice-Chairman since 1977, Mrs. Brent graduated in 1965 with a B.A. from the University of Toronto and with a LL.B. from Queen's University in 1968; she was called to the Bar in 1975. Mrs. Brent taught law at Queen's University from 1970 to 1974, and at the University of Western Ontario from 1974 to 1977. She was appointed to the permanent list of approved arbitrators of the Labour-Management Arbitration Commission in 1974, and since 1977 has been an active arbitrator and adjudicator. She has been an arbitrator with the Ontario Police Arbitration Commission since 1974. In 1980 Mrs. Brent was appointed as a Commissioner of both the Education Relations Commission and the College Relations Commission.

**E. NORRIS DAVIS** *Vice-Chairman*

Mr. Davis, who holds the degree of LL.B. (Sask.) 1938, was first appointed to the Board as an employer representative in 1948. From 1952 to 1953 he served as the Chairman of the Board. In 1953 Mr. Davis left the Board and during the next 15 years held several positions in corporate personnel and industrial relations, including a number of years as President of Carling O'Keefe Breweries of Canada Limited. Mr. Davis returned to the Board as a part-time Vice-Chairman in 1977.

**RORY F. EGAN** *Vice-Chairman*

Having completed his undergraduate work at St. Michael's College, University of Toronto in 1938, Mr. Egan earned a law degree from the same university in 1945. Called to the Bar in the same year, he engaged in the practice of law, and served for one year as Assistant Crown Attorney in St. Thomas, Ontario. In 1954 he joined A.V. Roe as Legal Assistant to the Vice-President of Industrial Relations. Mr. Egan returned to private practice with a law firm specializing in labour relations law in 1959. In 1963 he left his law practice to devote his time to chairing boards of conciliation and arbitration. Mr. Egan was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1966 and in 1974 was designated Alternate Chairman. He was appointed Chairman of the Ontario Police Arbitration Commission in 1976. Mr. Egan retired from the Board in 1979, but has continued to serve as a part-time Vice-Chairman.

**DON E. FRANKS** *Vice-Chairman*

Mr. Franks is a graduate of McMaster University (B.A. 1960) and Osgoode Hall Law School (LL.B. 1967). Joining the Board in 1969, he served as its Solicitor. In 1972 Mr. Franks was appointed a Vice-Chairman of the Board. He occupied this position until 1975 when he

was appointed Vice-Chairman of the Construction Industry Review Panel, which position he held until May, 1980. Mr. Franks also served, during 1975-76, as the Commissioner on the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario. The report prepared by him led to the amendment of *The Labour Relations Act* in 1977 which provided for province-wide bargaining in the construction industry. Mr. Franks was also involved in the implementation and monitoring of the province-wide bargaining scheme. In 1978 he was appointed chairman of a conciliation board by the government of Saskatchewan, which resolved a two-month province-wide strike by the Labourers' Union. Mr. Franks returned to the Labour Relations Board as a Vice-Chairman in May of 1980.

**RON A. FURNESS**                      *Vice-Chairman*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his L.L.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chairman in 1969.

**ROBERT D. HOWE**                      *Vice-Chairman*

Mr. Howe has been a part-time Vice-Chairman since February, 1980. He graduated with a LL.B. (Windsor) in 1972 and was called to the Bar in 1974. From 1972 to 1977 he taught law in the Faculty of Law at Windsor. Mr. Howe practised law as an associate of a Windsor law firm from 1977 to February of 1980. Though presently on leave of absence from the University of Windsor, he continues to teach part-time as a special lecturer in labour arbitration and has authored several publications relating to labour law. Mr. Howe is an experienced fact-finder and mediator in school board-teacher collective bargaining.

**RICHARD O. MacDOWELL**                      *Vice-Chairman*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), a M.Sc. (with Distinction) in Economics from the London School of Economics & Political Science (1970) and a LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chairman in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit.

**MORT G. MITCHNICK**                      *Vice-Chairman*

Mr. Mitchnick was appointed as Vice-Chairman of the Board in November, 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his L.L.B. at the University of Toronto Law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board.



**MICHEL G. PICHER** *Vice-Chairman*

Mr. Picher holds the degrees of A.B. (Colby College, Maine 1967), LL.B. (Queen's University, 1972) and LL.M. (Harvard, 1974). He was appointed a Vice-Chairman of the Board in 1976. Prior to his appointment, Mr. Picher taught law as Assistant Professor in the Faculty of Law at the University of Ottawa from 1974 to 1976. He is an experienced arbitrator, mediator and fact-finder.

**PAMELA C. PICHER** *Vice-Chairman*

Mrs. Picher was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1976. She is a graduate of Colby College, Maine (A.B., 1967) and Queen's University (LL.B., 1973). She is presently working towards an LL.M. degree from Harvard University, the required thesis having been completed. Prior to joining the Board, Mrs. Picher was an Assistant Professor at the University of Ottawa Law School. In 1975 she was commissioned by the Law Reform Commission of Canada to write a paper for the Administrative Law Section, which she presented in July, 1976. Mrs. Picher has several other legal publications to her credit and is an experienced arbitrator and fact-finder.

**NORMAN B. SATTERFIELD** *Vice-Chairman*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chairman. Mr. Satterfield holds a B.Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He has been involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years. Mr. Satterfield is a past Director of the Construction Labour Relations Association of Ontario and a past Member of the National Labour Relations Committee of the Canadian Manufacturers' Association.

**IAN C.A. SPRINGATE** *Vice-Chairman*

Mr. Springate has been a Vice-Chairman of the Board since May of 1976. He has degrees of B.A. (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chairman. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator.

**MEMBERS REPRESENTATIVE OF LABOUR AND MANAGEMENT****HOWARD J.F. ADE**

Mr. Ade was appointed as a management representative Board Member in January, 1972. Having retired from the Royal Canadian Mounted Police in 1957, Mr. Ade joined Standard Industries Limited as its Director of Labour Relations. He has served as Chairman of the Labour Relations Committee of the Canadian Construction Association and the Labour Bureau of the Ontario Federation of Construction Associations. He has also been a

member of negotiating committees and labour relations committees in various sections of the construction industry. Mr. Ade has served as labour relations advisor and consultant to several employers and employer associations in the construction industry.

#### DAVID B. ARCHER

One of the most senior persons on the Board, Mr. Archer was appointed as a part-time Board Member representing labour in 1948. He is a past president of the Textile Workers' Union (Local 1) and also of the Toronto and Lakeshore Labour Council. Mr. Archer was a vice-president of the Canadian Labour Congress and for several years held the position of President of the Ontario Federation of Labour. The other numerous offices Mr. Archer has held, include Executive Member of the Ontario Economic Council, and Member of the Prime Minister's Advisory Committee on Economic Policy.

#### BROMLEY L. ARMSTRONG

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in March of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board.

#### T. GEORGE ARMSTRONG

Mr. Armstrong was appointed a part-time Member of the Board representing management in April of 1980. Between 1946 and 1970 he was involved in many aspects of industrial relations as the owner of a heavy construction company.

#### CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

#### JOHN D. BELL

Mr. Bell has been a full-time Member of the Board representing management since 1970. He was employed for 33 years at Massey-Ferguson Limited in various personnel and industrial

relations capacities prior to his appointment to the Board. The last position he held at the Company was Director of Personnel and Industrial Relations, Industrial and Construction Machinery Division.

#### C. GORDON BOURNE

Mr. Bourne has been a part-time Member of the Board representing management since April of 1977. Between 1945 and 1977, he was employed by Molson's Brewery (in Quebec and in Ontario) in various personnel and industrial relations capacities. Among the offices Mr. Bourne held prior to his appointment to the Board include: Director of the Montreal Personnel Association (1952-54); Director (1962-67) and President (1966-67) of the Personnel Association of Toronto; Member of the Canadian Manufacturers' Association Ontario Labour Relations Committee (1963-77); and Member of the Ontario Brewers' Industrial Relations Committee (1955-77).

#### E. JIM BRADY

Mr. Brady was appointed a part-time Member of the Board representing management in November, 1979. He was employed in various capacities in personnel and industrial relations for 34 years prior to his appointment. He spent the majority of this time at Kimberly-Clark of Canada Limited, where he became Director of Industrial Relations in 1972. In 1975, Mr. Brady was appointed Vice-President of Industrial Relations of the Abitibi-Price Inc. Group.

#### W. GORDON DONNELLY

Mr. Donnelly was appointed a part-time Board Member representing management in 1979. Having obtained a B.A. (1939) and B.C.L. (1947) from McGill University in Montreal, he practised law in the Province of Quebec. In 1947 he joined the Aluminum Company of Canada Limited, where he progressed from Industrial Relations Supervisor, Shawinigan Works, to Vice-President Personnel and Industrial Relations, Alcan Products Limited, Toronto, Ontario in 1970.

#### MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. A graduate of the University of British Columbia, Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he has held include: Director of Labour Relations of the Ontario Federation of Construction Associations, 1970; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel, 1972; Director of Industrial Relations, Kaiser Canada, 1974; Manager of Industrial Relations of the SNC Group, 1975; and Executive Director of the Construction Employers Co-ordinating Council of Ontario, 1979. Mr. Eayrs is also a past Chairman of the National Labour Relations Committee of the Canadian Construction Association.

#### MICHAEL J. FENWICK

Mr. Fenwick was appointed a part-time Board Member representing labour in October, 1976. Since 1940 he has been involved in organizing, negotiating and appearing before arbitration and conciliation boards and has participated in many other facets of union activity.



Employed by the Steelworkers Organizing Committee (CIO), which was later renamed the United Steelworkers of America, between 1940 and 1954 Mr. Fenwick administered the business affairs of the Union's locals in Oshawa, Whitby, Ajax, Bowmanville and Port Hope. In 1954, he was promoted to Assistant to the Director of District 6 and he served in that capacity until his appointment to the Board.

#### WILLIAM H. GIBSON

Mr. Gibson was appointed a part-time Board Member representing management in 1978. He has been employed by Robert McAlpine Limited since 1954 and is Vice-President of that company with a portfolio that includes the responsibility for labour relations for the Company's operations throughout Canada. Mr. Gibson has been very active in the field of labour relations involving contractors and has held several key positions in various construction contractors' associations.

#### ANNE S. GRIBBEN

Ms. Gribben, a registered nurse by profession, obtained a B.A. from the University of Toronto in 1968, in addition to her nursing qualifications. Her nursing career at the Toronto Western Hospital included 13 years served in a supervisory capacity. She has served on various committees of both the Canadian Nurses' Association and the Registered Nurses' Association since 1950. An Executive Officer of the former District No. 5, Registered Nurses' Association of Ontario from 1960, during 1964-65 she was involved in its re-organization into the present-day Metro Toronto Chapter. Ms. Gribben joined the Employment Relations Department of the Registered Nurses' Association of Ontario in 1965, and became its Director in 1968. Ms. Gribben relinquished that post in 1974 to become the Chief Executive Officer of the Ontario Nurses' Association. She was appointed a part-time Board Member representing labour in 1975 — the first woman to be appointed as a Board Member of the Ontario Labour Relations Board.

#### LLOYD HEMSWORTH

Mr. Hemsworth has served as a part-time Member of the Board representing management since August of 1975. Having obtained a B.A. degree (1939) from the University of Western Ontario, he returned to complete a management training course at that university in 1954. Mr. Hemsworth is also a part-time Member of the Public Service Staff Relations Board. Prior to his appointment to the Ontario Labour Relations Board, Mr. Hemsworth held several key positions in the personnel and industrial relations departments at Canadian Industries Limited, Kimberley-Clark of Canada and de Havilland Aircraft. Mr. Hemsworth has presented lectures and papers at numerous universities and seminars.

#### ALBERT HERSHKOVITZ

Mr. Hershkovitz has served as a part-time Board Member representing labour since 1976. He has been the Business Agent of the Fur, Leather, Shoe and Allied Workers' Union, Locals 82 and 62, since 1956, and a Vice-President of the Ontario Federation of Labour since 1974. In 1977 he became the President of the Ontario Provincial Council, United Food & Commercial Workers' International Union. In addition to holding these offices, Mr. Hershkovitz has been a Member of the Board of Referees of the Unemployment Insurance

Commission since 1960 and for many years has acted as a union nominee on boards of arbitration.

## OLIVER HODGES

Mr. Hodges has been a full-time Board Member representing labour since 1967. In 1943, he became the Representative and Director of Education, National Union of Shoe and Leather Workers, CCL. Between 1948 and 1950 he was a Representative of the CCF Labour Committee. In 1950 he became the Hamilton area representative to the Canadian Congress of Labour and he held this office until 1954, when he became the Canadian Director of the United Glass and Ceramic Workers of North America, CLC, AFL-CIO. Between 1965 and 1967 Mr. Hodges served on numerous conciliation and arbitration boards as union nominee. During the period 1943 to 1965, he was a candidate for the CCF and NDP in municipal, provincial and federal elections.

## ROBERT D. JOYCE

Mr. Joyce has been a part-time Member of the Board representing management since September, 1977. He joined Canada Packers Limited in 1947 and became its Corporate Relations Manager in 1965. He was also elected to the Company's Board of Directors that year. During his career at Canada Packers, Mr. Joyce was actively involved in negotiation, conciliation and arbitration proceedings and also served on many boards of arbitration as employer nominee. Mr. Joyce has been called upon to serve on commissions and task forces appointed by governments on several occasions. As a member of the Canadian Manufacturers Association Industrial Relations Committee, Mr. Joyce has conducted many industrial relations seminars. He has also provided an employee relations consultation service for management for several years.

## HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario, 1958-62; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and Member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

## BRUCE K. LEE

Mr. Lee has served as a part-time Board Member representing labour for the past three years. He was President of the UAW Amalgamated Local 252, Toronto, for 19 years. During that time, he served on various Union committees and delegations, both in Canada and the United States. In 1964, Mr. Lee was appointed to the UAW organizing staff.

## STEPHEN H. LEWIS

Mr. Lewis was appointed as a part-time Board Member representing labour in 1979. Educated at the University of Toronto and the University of British Columbia, Mr. Lewis taught in Africa before entering politics in 1963. He was a Member of the Ontario legislature from 1963 to 1977. During this time, he held the positions of Leader of the New Democratic Party of Ontario and Leader of the Official Opposition in the legislature. Since his retirement from active politics, Mr. Lewis has been engaged in a career as a columnist, broadcaster and lecturer. He has also been active in the trade union movement and is experienced in the arbitration process and other facets of collective bargaining. On several occasions he has been appointed to Disputes Advisory Committees under *The Labour Relations Act* as a representative of labour.

## F. WILLIAM MURRAY

Mr. Murray was a part-time Member of the Board representing management from 1965 to February of 1980, when he assumed a full-time position on the Board. From 1948 to 1963, Mr. Murray was employed as the Manager of the Motor Transport Industrial Relations Bureau, which served as the labour relations representative for groups of companies in Ontario and Quebec. In 1963 he formed his own industrial relations consulting firm and was active in industrial relations consulting work for many trucking firms and related industries. Since 1971 Mr. Murray has been a Member of the Public Service Staff Relations Board. He is also a Member of the Board of Trade Industrial Relations Committee and the Personnel Association of Toronto.

## PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britain and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of CUPE and presently holds the office of Vice-President of the Ontario Federation of Labour.

## ROBERT W. REDFORD

Mr. Redford has been a part-time Member of the Board representing management for the last four years. Having graduated from Queen's University with a degree of B.A. (Economics) in 1963, he joined Canada Packers Inc., where he worked for 16 years in the employment relations function. His final position at Canada Packers was Corporate Manager, Personnel Services. Mr. Redford is currently the Executive Director of the Personnel Association of Toronto and the Personnel Association of Ontario.

## JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and a



LL.B. in 1968. After his call to the bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

#### MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

#### WILLIAM F. RUTHERFORD

Mr. Rutherford has been a full-time Member of the Board representing labour for three years. He was the Houdaille Plant Chairman for the UAW for 37 years. He was a Member of the Oshawa District Labour Council between 1944 and 1977 and a Member of the Canadian UAW Council during 1948 to 1971. Mr. Rutherford has served on the Board of Referees of the Unemployment Insurance Commission for 12 years.

#### HARRY SIMON

Mr. Simon has been a part-time Board Member representing labour since July of 1974. He became actively involved in the labour movement in 1926. From 1943 to 1956 he was the Canadian representative to the American Federation of Labour. From 1958 to 1974, Mr. Simon was the Ontario Regional Director of Organization of the Canadian Labour Congress; he was also a Member of the Labour-Management Arbitration Commission from its inception in 1969 until its abolition in 1979. In addition to these appointments, Mr. Simon has served on various boards and commissions representing the Ontario Federation of Labour and the Canadian Labour Congress.

#### E. CLIFFORD WENT

Mr. Went was appointed as a part-time Board Member representing management in April of 1978. He is a graduate of the University of Saskatchewan with B.A. and LL.B. degrees. Employed by Dominion Stores Limited from 1936 to 1976, from 1944 to 1976 he functioned in various personnel and industrial relations capacities. In 1959 Mr. Went became Vice-President of Personnel and Industrial Relations and in 1969 he assumed the post of Vice-President of Administration, which included responsibility for personnel and industrial relations. He held this position until his retirement in 1976. Mr. Went is a past Director of the Personnel Association of Toronto, and a past Vice-President of the Retail Council of Canada. During 1972-73 he was the President of the Industrial Accident Prevention Association of Ontario.

#### JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. He has been the Labour Relations Consultant to the

Electrical Contractors Association of Ontario for the last 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association of Ontario, Charter Member of the Canadian Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

#### **NORMAN A. WILSON**

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

#### **REGISTRAR AND CHIEF ADMINISTRATIVE OFFICER**

#### **DON K. AYNSLEY**

Having served in the Canadian Armed Forces between 1954 and 1960, Mr. Aynsley joined the Board in 1961 in a clerical position. In 1969 he became an examiner and in 1974 assumed duties as a Labour Relations Officer. In 1976, by Order-In-Council, Mr. Aynsley was appointed Registrar of the Board.

## V HIGHLIGHTS OF BOARD DECISIONS

### **Union Breached Duty of Fair Representation in Seeking Dismissal of Grievor**

A union official gathered a petition addressed to the employer threatening an unlawful strike if the grievor, who was suspected of having leaked certain information to the press, was not dismissed. Other union officials signed the petition. The employer terminated the employment of the grievor. The trade union, at the request of the grievor processed a grievance against the dismissal. The grievance was dismissed by a board of arbitration. The grievor's request to apply for judicial review was denied by the union. The grievor alleged that the union had contravened section 60 of *The Labour Relations Act*. The Board held that although the refusal to apply for judicial review did not constitute failure to represent fairly, the conduct of the union officials in seeking the grievor's dismissal did. The Board held that the officials' conduct could not be justified on the basis of a need "to go along with the crowd." The Board further held that the subsequent taking of the grievance against dismissal to arbitration did not cure the unlawful conduct. (*Toronto East General and Orthopaedic Hospital Inc.*, [1980] OLRB Rep. Apr. 555).

### **Relocation of Company Tainted by Anti-Union Motive — Extensive Remedies Ordered**

The employer had decided to relocate its plant in Hamilton to several other locations. The union filed an unfair labour practice complaint alleging anti-union motive. In addition, the union claimed that the failure of the employer during negotiations to disclose to the union its decision to relocate, was bad faith bargaining and that the displacement of employees was an unlawful lock-out. The Board found that at the time bargaining was carried out, the decision to relocate had not been finalized and that therefore the employer was not obliged to disclose these tentative plans on its own initiative. The complaint as it related to bad faith bargaining failed. The Board held that the facts did not meet the definition of "lock-out" in the Act and consequently that part of the complaint was dismissed as well. However, the Board held that the decision to relocate constituted an unfair labour practice in that the decision was tainted by anti-union motive. The Board's remedial order included directing the employer: to offer employees their former jobs at the new locations and to pay their relocation expenses; that the union be given access to the employees at the new locations for purposes of organization; and that the union be reimbursed for its organization costs. (*Westinghouse Canada Ltd.*, [1980] OLRB Rep. Apr. 577).

### **Refusal to do Unsafe Work — Extent of the Right Discussed**

The complainants refused to do certain work involving the use of an anode furnace which they thought was unsafe. The employer investigated and concluded that the work was safe. They still refused to work and a safety inspector was called. The inspector admitted to the complainants that he had no personal experience in anode furnaces, which formed the subject of the dispute. He further admitted that he was relying on the expertise of the company officials to whom he had spoken. The inspector concluded that the work was safe and ordered as a precaution that two employees, rather than one, be present when the furnace was being used. The complainants continued to refuse to work and consequently the company sent them home without pay and placed disciplinary letters in their records. They complained to the Board that they were disciplined because they exercised the right to refuse unsafe work under



*The Employees Health and Safety Act, 1976* (since repealed and replaced by *The Occupational Health and Safety Act, 1978*). The Board had to decide whether there was a proper exercise of the right to refuse work by the employees in question. The employer argued that the complainants did not have “reasonable grounds to believe” that their workplace was unsafe; that they were not entitled to the protection of the Act since they acted as a group, and engaged in a form of an illegal strike; and that the complainants should have testified to establish that each of them believed that the work was unsafe. The Board held that the issue was not whether the work in fact was unsafe, but whether the complainants had reasonable cause to believe that it was unsafe. The Board held that “reasonable cause to believe” should be interpreted objectively, so that the issue is not whether an employee in fact believed, but whether the circumstances were such as to cause a reasonable person with equal training and experience to believe that the work was unsafe. The Board held that even after the inspector’s order that the work was safe, an employee may continue to have reasonable cause to believe otherwise and may continue to refuse to work. The Board cautioned though that at that stage there would have to be special circumstances which would create “reasonable cause” such as in this case where the inspector had admitted to the complainants that he was inexperienced and was relying on the expertise of company officials. The Board held that even though the complainants had acted as a group, each of them had reasonable cause to believe that the work was unsafe and were entitled to the protection of the Act. The Board concluded that the employer contravened the Act in imposing discipline on the employees. (*Inco Metals Co.* [1980] OLRB Rep. July 981).

### **Board Policy on Deferment to Arbitration and Unfair Labour Practice Postings**

The trade union complained that the grievor, a union steward, had been dismissed by the employer, because of her holding that union office. The employer argued that since the dismissal was grievable under the collective agreement the Board should defer to arbitration. The Board held that notwithstanding her probationary status, the grievor had statutory rights which had been contravened by the employer. Reviewing the Board policy as to deferment to arbitration, the Board stated that in view of the fact that there is some question about the grievor’s right of access to the arbitration process because of her probationary status and in view of the different onus of proof and remedies available before arbitration boards and the Labour Relations Board, there should be no deferment to arbitration. The Board proceeded to find a violation of the Act by the employer and made remedial orders including reinstatement and compensation and the posting of a Board notice. The decision also reviewed the rationale for unfair labour practice postings, and indicated that they should usually form part of every Board remedial order (*Valdi Inc.*, [1980] OLRB Rep. Aug. 1254).

### **Board Has Jurisdiction Over Employees of “Non-Status” Indian Association**

The union applied for certification with respect to employees of a “non-status” Indian Association, which was a private social service organization providing social and economic assistance to persons of native ancestry, who were not recognized as “Indians” under the *Indian Act*. The employer argued that the Board did not have the constitutional jurisdiction to entertain the application because many of the association’s members, employees, and clientele were Indians. It was argued that as a result, the association’s labour relations are within federal jurisdiction. The Board held that Metis people were not Indians under the *Indian Act* and that even if they were, provincial labour legislation of general application did not intrude on their Indian character, status and identity. Further, the Board held that constitutional jurisdiction over labour relations is determined not by the status of an employer’s principals, employees or

customers but by the character, operations or functions of the enterprise. The employer's operations were in no way connected with Indian reserves and lands or the exercise of rights or responsibilities under the *Indian Act*. The Board held that it had jurisdiction and proceeded to grant certification. (*Ontario Metis and Non-Status Indian Association*, [1980] OLRB Rep. Sept. 1304).

### **Individuals Cannot Apply for Determination of Employee Status**

In this case, the Board held that section 95(2) of the Act was only intended to resolve issues between bargaining parties. It was not intended to provide a forum in which employees could question their status when that was not in issue between the employer and their trade union. The "question" referred to in section 95(2) must be one arising between bargaining parties during negotiations or during the term of a collective agreement. (*Central Park Lodges of Canada*, [1980] OLRB Rep. Oct. 1373).

### **Contracting Out Not Tainted by Anti-Union Motive**

The trade union complained of unfair labour practices arising out of the employer's decision to contract out its janitorial work, which resulted in the lay-off of its employees. The Board found that there was no contravention of *The Labour Relations Act* since the decision to contract out was free of anti-union motive and was solely motivated by a desire to increase profitability. The Board further found that the employer had no obligation to disclose at the bargaining table, since at the time no concrete intention or plan to contract out existed. The complaint was dismissed. (*Kennedy Lodge Nursing Home*, [1980] OLRB Rep. Oct. 1454).

### **The Test of Who is "The Employer"**

This case involved a determination by the Board as to which of three entities was the employer for the purposes of a certification application. The Sutton Place complex was a joint venture of a partnership between two corporations. Sutton Place Hotel, Sutton Place, and Dennis Management Co. were all divisions of the partnership. No single corporate or business entity operated the complex, which included three distinct areas, i.e. hotel, apartment, and commercial. The work performed by the employees in question benefitted all three areas, since the mechanical systems they serviced were common to all three areas. The employees believed, on reasonable grounds, that their employer was Sutton Place Hotel. Dennis Management was responsible for their day to day supervision, hiring, firing and discipline and the determination and payment of wages, and benefits. There was a charge-back system whereby Dennis Management charged Sutton Place and Sutton Place Hotel for labour and management services. The Board concluded that Dennis Management was the employer on the basis that it had "fundamental control" over the employees. The Board stated that where several entities share the responsibilities among them none of the criteria in the tests normally used by the Board to ascertain the employer are determinative. In such arrangements, the entity having "fundamental control" must be ascertained in the context of the situation as a whole. (*Sutton Place Hotel*, [1980] OLRB Rep. Oct. 1538).

### **Union Acted Arbitrarily in Seeking Demotion of Grievor**

The trade union forced the employer to demote the complainant by threatening to engage in unlawful strikes if the employer failed to do so. The demoted employee complained to the

Board that the union contravened its duty to represent him fairly. The Board agreed with the complainant, holding that the trade union's treatment of the grievor was arbitrary. (*Toronto Hydro Electric System*, [1980] OLRB Rep. Oct. 1561).

### **Union's Refusal to Sign Agreement After Last Offer Vote Accepting Employer's Offer — Bad Faith Bargaining**

Recent amendments to *The Labour Relations Act* permit an employer to request the Minister of Labour to direct a vote among employees in a bargaining unit to accept or reject the employer's last offer on the matters remaining in dispute at negotiations. A vote under this provision was held, at which, by a narrow margin the employees voted to accept the employer's last offer. Nevertheless, the union refused to sign a collective agreement, claiming that the vote is a mere "opinion poll" and not of any legal effect and that in any event the vote was influenced by the employer's unlawful conduct. The Board held that *prima facie* the result of the vote obliges the trade union to sign a collective agreement. Refusal to do so was held to be a breach of the duty to bargain in good faith. On the facts the Board held that the employer's conduct did not affect the ability of the employees to express their true wishes at the vote. (*Canada Cement Lafarge Limited*, [1980] OLRB Rep. Nov. 1583).

### **Applications for Certification in the Industrial, Commercial and Institutional Sector of the Construction Industry**

In an application for certification of a bargaining unit in the ICI sector, the Board held that for an application to "relate to" the ICI sector within the meaning of section 131a(1) of *The Labour Relations Act*, the application need only refer to a bargaining unit described so as to include that sector within its scope. It is not necessary that the employer actually have employees working in the ICI sector on the date of the application for certification. (*Colonist Homes Ltd.*, [1980] OLRB Rep. Dec. 1792).

### **Termination Petition not Voluntary**

During a lengthy strike, the union had been unable to obtain a collective agreement for the employees, two years having elapsed since certification. An application for termination of bargaining rights was filed, supported by a petition signed by a majority of employees. Although the Board found that the employer had not supported the petition, the evidence disclosed that the majority of signatures on the petition were obtained on the company premises, in the presence of management. The Board stated that, while there is no absolute rule against circulating a petition on company premises, since the signatures were obtained in the presence of management, the Board could not be satisfied that the petition was voluntarily signed by more than 45 per cent of the employees in the bargaining unit. Consequently, the application was dismissed. (*Ontario Hospital Association (Blue Cross)*, [1980] OLRB Rep. Dec. 1759).

### **Oral Evidence of Payment of Initiation Fee Not Admissible**

Three of the membership cards filed by the union did not indicate the payment of an initiation fee of at least one dollar. The union sought to remedy this deficiency by leading oral evidence. The Board reiterated its rule that while oral evidence may be led to cure technical irregularities, it would not allow oral evidence to establish the two substantive conditions of



membership specified in *The Labour Relations Act*, namely, the application for membership and the payment of one dollar. (*PRC Chemical Corporation of Canada Ltd.*, [1980] OLRB Rep. Dec. 1805).

### **Journalist Required to Reveal Source of Information**

The union complained of unfair labour practices by the employer, alleging that the employer had caused an intimidatory news item to be published in the local newspaper. The news item was to the effect that the employer was not planning to renew its contract with the township. The editor of the newspaper was called as a witness under subpoena and on being questioned by the union counsel refused to disclose the source of the news item. He took the position that to reveal sources of information would betray the trust the community had placed on him. He took the position that such trust was very important to his job. The Board ruled that despite the witness's concerns, the evidence was relevant and admissible. The witness was compellable since there is no privilege under the law of Ontario permitting a journalist to refuse to reveal his sources where such information is relevant to the proceedings. The Board held that in refusing to answer the question, the witness was exposing himself to contempt proceedings. On the application of the complainant union, the Board consented to state a case to the courts under *The Statutory Powers Procedure Act, 1971*. (*Ontario Humane Society*, [1980] OLRB Rep. Dec. 1776).

### **Introduction of Security Measures — A Violation of the Act — Section 7a**

In response to the union's organizing campaign, the employer, a hotel, instituted extensive security measures inside and outside its premises. These security measures included a new sign-in procedure for employees, security patrols inside the hotel and the use of the marked security patrol cruisers outside the hotel and in the parking area. In addition, several employees who supported the union were dismissed. The Board found that the majority of the discharges complained of were motivated by anti-union sentiment and therefore were unlawful. As for the security measures, the employer admitted that they were introduced to restrict organizing activity on the employer's premises. The Board held that the right of an owner to take steps for the adequate security and control of his premises is a *prima facie* incident of ownership not to be lightly interfered with. Nevertheless, in view of the fact that the chilling effect of the employer conduct was so readily foreseeable, the Board held that the employer must be taken to have been motivated by anti-union motive, especially in the light of the general anti-union behaviour of the employer already established. The Board reiterated its view that an employee's time outside of his working hours is for the employee to use as he wishes without unreasonable restraint by the employer, even though the employee may be on company property. In the circumstances the Board certified the applicant trade union without directing a representation vote. (*Skyline Hotels Limited*, [1980] OLRB Rep. Dec. 1811).

### **Ban on Overtime — A Lawful Exercise of the Right to Strike**

The trade union, which was in a legal position to strike, voted to impose a ban on voluntary overtime. The employer sent disciplinary letters to employees who refused overtime in accordance with the collective decision. The union filed unfair labour practice complaints against the employer over the disciplinary letters. The Board held that the ban on overtime was aimed at putting pressure on the employer in the way it was conducting negotiations. It was a form of strike activity, which, being timely, was a lawful exercise of rights under the Act. The

Board also held that the employer engaged in an unfair labour practice in disciplining employees for exercising lawful rights. (*Corporation of the City of Brampton (Brampton Transit)*, [1981] OLRB Rep. Jan. 1).

### **Foremen Entitled to Bargain Collectively**

The Board received an application for certification with respect to a tag-end unit composed exclusively of foremen. The employer argued that the foremen were not “employees” within the meaning of the Act and were not entitled to bargain collectively. The Board, having reviewed the duties and responsibilities of the persons in question, held that they did not perform “managerial functions” since they did not exercise effective control and authority so as to materially affect the economic lives of the employees. (*Hydro Electric Commission of the Borough of Etobicoke*, [1981] OLRB Rep. Jan. 38).

### **Intimidation and Surveillance Unfair Labour Practices — Section 7a**

The applicant union was certified without a representation vote following a finding by the Board of several unfair labour practices. The employer had subjected two union supporters to constant surveillance and wrote intimidating letters to several employees who were to testify before the Board. In addition, the employer exercised undue influence at a series of employee meetings designed to discourage union support and to expose those supporting the union. A union supporter had also been discharged. The Board concluded that these violations called for a comprehensive remedial order, including the posting of a notice by the employer promising to refrain from future violations and the payment of damages to the two employees who were subjected to extraordinary harassment and indignity through constant surveillance because of their union activity. (*K-Mart Canada Ltd.*, [1981] OLRB Rep. Jan. 60). The Board, in a subsequent decision, reconsidered and revoked that part of its order directing payment of damages for harassment and indignity (*K-Mart Canada Ltd.*, [1981] OLRB Rep. Feb. 120).

### **Bargaining Unit may not be Enlarged in Displacement Application**

The applicant trade union applied for certification to displace the incumbent union which held bargaining rights with respect to “technical” employees of the hospital. In the process, the applicant sought the expansion of the bargaining unit to include the employer’s professional employees who were unorganized at that time. The Board reiterated its general rule that in displacement applications the applicant must take the existing bargaining unit. The Board refused to sweep the professional employees into the unit, especially in view of the fact that the union failed to show any significant degree of support from employees within that group. (*Toronto East General and Orthopaedic Hospital, Inc.*, [1981] OLRB Rep. Feb. 225).

### **Temporary Replacement of Locked Out Employees Not Unlawful**

The parties had made no real progress during bargaining. The employer concluded that the union was deliberately delaying negotiations in order to co-ordinate bargaining with all of the company’s plants across Canada. The employer commenced a legal lockout and hired temporary replacements for those employees locked out. As the Lock-out progressed, the employer tabled new demands seeking relief from restrictive clauses contained in the expired collective agreement. The Board concluded that the company’s actions were taken in order to force the trade union to bargain and make an agreement and were not intended to avoid an

agreement. A party may change its bargaining stance to suit the circumstances arising out of a strike or lock-out. Since there was no intention to avoid a collective agreement, that was not bad faith bargaining. The Board distinguished between permanent replacement and temporary replacement of locked out employees. Permanent replacement would be illegal since that would be tantamount to discharging employees for engaging in collective bargaining. However, the temporary replacements could be removed when the union agreed to the terms and conditions demanded by the employer. The Board held that the use of temporary replacements during a lock-out, like the use of non-bargaining unit employees or sub-contracting of work, in order to continue the employer's operations, was not contrary to the Act. (*Westroc Industries Limited*, [1981] OLRB Rep. Mar. 381).



## VI COURT ACTIVITY

### ***Valentine Enterprises Contracting***

**Ontario Divisional Court, Date of Decision**

**May 22, 1980; 80 CLLC ¶14,042**

The applicant sought judicial review of a Board decision accrediting the respondent employer association, in which the Board found that the applicant was an employer with whom the respondent Local 506 had bargaining rights. The applicant argued that it had received insufficient notice and that the Board's order conferred bargaining rights upon the union for the applicant's employees. The court, in dismissing the application, found that there had been sufficient notice and that the question of bargaining rights is a question of fact protected from review by section 97 of *The Labour Relations Act*.

### ***P. J. Wallbank Manufacturing Co. Ltd.***

**Ontario Divisional Court, Date of Decision**

**August 20, 1980; unreported**

This was an application for judicial review of a Board decision certifying the UAW with respect to a bargaining unit of employees of the employer. There were several grounds on which the application was based. The court held, on the first ground, that a finding that an employee did not exercise management functions was within the exclusive jurisdiction of the Board. The refusal of leave to the employer to re-open its case was held not to be a denial of natural justice in the circumstances. The court held that in any event, this was a matter of procedure and as such was exclusively within the jurisdiction of the Board. The Board's finding that the employer did not participate in or assist the union was held not to be so patently unreasonable in the light of the evidence as to warrant intervention by the court. The application was dismissed. In this matter the court had earlier dismissed an application for a stay of the Board order pending judicial review.

### ***Windsor Airlines Limousine Services Limited***

**Ontario Divisional Court, Date of Decision**

**September 2, 1980; (1981), 30 O.R. (2d) 732; 117 D.L.R. (3d) 400**

The applicant sought judicial review of a Board order certifying the respondent trade union with respect to its employees. Two grounds were forwarded in support of the application. First, that the Board was without constitutional jurisdiction since labour relations between the employer and the employees in question were within federal jurisdiction. Second, it was argued that the Board lost jurisdiction when it refused to adjourn proceedings at the request of the employer. The court held that the "ordinary business" of the employer was intra-provincial. Extra-provincial activity was exceptional and minimal. Therefore, it was held that the Board was justified in concluding that the company was within provincial jurisdiction. On the second ground, the court noted that the Board's denial of an adjournment was subject to the condition that if the employer felt, as the hearing proceeded, that his case was in any way prejudiced by the late receipt of particulars, he could make a new application for adjournment at that time. The court held that when the employer walked out of the hearing in the face of such a ruling, there was no loss of jurisdiction or denial of natural justice. The court commented that the Board's decision to press on with the hearing was not arbitrary since it was

done for what appeared to the Board to be the necessity of the situation. The application failed on both grounds. The court had earlier refused to order a stay of the Board order pending judicial review. Leave to appeal the Divisional Court decision to the Court of Appeal was denied.

***Westinghouse Canada Inc.***

**Ontario Divisional Court, Date of Decision**

**September 19, 1980; 80 CLLC ¶14,062**

The employer sought to quash a decision of the Board where it had held that the company had committed an unfair labour practice by deciding to relocate the plant, in part as a result of anti-union motivations. The Board ordered the employer to offer the displaced employees the option of accepting employment at the relocated plant. In addition, the union was given access to employees at the new plant for purposes of organization, and the employer was ordered to reimburse the union for re-organization expenses. The employer argued that the Board's finding that the relocation was not for "cause" was patently unreasonable; that in allowing the union access, the Board interfered with the employees' right to select the union of their choice; and that the Board's decision was tantamount to directing the employer to assist a trade union, which was conduct prohibited by *The Labour Relations Act*. The court held that the Board's conclusion as to presence of anti-union motive was not patently unreasonable. The court stated that in making the remedial orders the Board was simply attempting to put the employees and the trade union as much as possible in the same position as if the relocation had never taken place. In the circumstances the remedial orders were held not to be outside the scope and intent of the Act.

***Thames Steel Construction Ltd.***

**Ontario Divisional Court, Date of Decision**

**October 21, 1980; unreported**

The respondent union was certified by the Labour Relations Board over the opposition of the employer and some objecting employees. The applicant applied for judicial review and that hearing was pending. In the interim, the union proceeded with bargaining and was in a position to call a lawful strike. The employer applied for an interim order under section 4 of *The Judicial Review Act* to stay the Board order, which would make the anticipated strike unlawful.

The court stated that relief under section 4 is an extraordinary remedy which is subject to the discretion of the court. Therefore, in order to obtain the relief requested, the employer must show a *prima facie* case that the Board order may be reviewed on the ground of jurisdictional error as alleged. The court noted that the union had been certified by the Board and the employees were in a lawful position to strike. The court held that these rights of the union and the employees should not be interfered with unless it is established *prima facie* that the Board order is likely to be judicially reviewed. The court held that such a *prima facie* case was not established and accordingly the application was dismissed. The court also noted that the applicant could have applied for a speed hearing of its application for judicial review under section 6(2) of the Act, but chose not to do so. Following the dismissal of the application for a stay, the matter did not proceed to a hearing but was settled.

***The Ontario Metis and Non-Status Indian Association***  
**Ontario Divisional Court, Date of Decision**  
**November 24, 1980; (1980), 6 A.C.W.S. (2d) 132**

The applicant employer sought to have the Board order certifying the respondent union stayed under section 4 of *The Judicial Review Procedure Act* pending the outcome of its application for judicial review. It had applied for judicial review on the ground that the matter was not within the constitutional jurisdiction of the Board.

The court stated that a stay is granted “to preserve the status quo in situations where to refuse it would have the result of a hollow victory” for the successful applicant. However, the applicant must establish a *prima facie* case that it will be successful. Also, it must establish that a refusal to stay would result in irreparable damage to the applicant and that the granting of a stay will not create a substantial injustice to the union. The court noted that the applicant had failed to apply under section 6(2) of *The Judicial Review Procedure Act* for a speedy hearing of its application for judicial review. Since the applicant did not, in the court’s view, satisfy the above conditions, the application was dismissed. The applicant subsequently did not proceed with the application for judicial review.

***Hugh Murray (1974) Limited and John Entwistle Limited***  
**Ontario Divisional Court, Date of Decision**  
**December 17, 1980; 81 CLLC ¶14,091**

The applicant trade unions sought judicial review of two decisions of the Board in which they were found to have abandoned their bargaining rights. The applicants argued that the only issue the Board should have considered was whether the union was once certified, and should not have considered questions as to how long ago certification occurred or what the applicants’ conduct had been since. The applicants submitted that there is no express mention in the Act of abandonment of bargaining rights as a ground for declaring that a union no longer represents the employees in a bargaining unit.

The court dismissed the applications pointing out that the Act does not purport to list exhaustively all matters which the Board may consider in its various decisions. On the other hand the Board with its labour relations expertise, has a duty to take into account all matters it considers to be relevant. The court held that abandonment of bargaining rights once possessed, is a matter relevant to the question of whether at the relevant times the applicants held bargaining rights. Leave to appeal the Divisional Court decision to the Court of Appeal was denied.

***Ajax and Pickering General Hospital et al***  
**Ontario High Court of Justice, Date of Decision**  
**January 21, 1981; unreported**

The applicant hospitals had applied for a cease and desist order from the Board against CUPE, which allegedly was threatening to call in an unlawful strike in contravention of *The Hospital Labour Disputes Arbitration Act*. While the Board hearing was pending, the union applied to the High Court for an order prohibiting the Board from proceeding with the hearing. The application was based on two grounds. Firstly that the Board was without constitutional jurisdiction to grant cease and desist relief to the hospitals and secondly that



*The Hospital Labour Disputes Arbitration Act* was *ultra vires* the province because it conflicted with an international treaty entered into by Canada. The court held that the power vested in the Board to issue cease and desist relief does not offend section 96 of *The British North America Act*, because this power is purely incidental to the function of the Board of maintaining labour peace. It was held that these power do not usurp the powers of the Court and therefore are not *ultra vires*. The application for prohibition was dismissed.

***The Municipality of Metropolitan Toronto***  
**Ontario Divisional Court, Date of Decision**  
**January 29, 1981; unreported**

This was an application for judicial review of a decision of the Board wherein it held that the Municipality was an employer which operates a business in the construction industry within the meaning of the Act. The applicant contended that by giving the words "construction industry" a meaning they cannot reasonably bear, the Board had lost jurisdiction. In a brief decision, it was pointed out that the Divisional Court had considered and rejected the same argument in a previous case, which was not distinguishable from this one. The application was dismissed. Leave to appeal the decision of the Divisional Court to the Court of Appeal was denied.

***Ontario Humane Society***  
**Ontario Divisional Court, Date of Decision**  
**January 30, 1981; unreported**

In a complaint of unfair labour practices by the employer, the union called as a witness under subpoena, a newspaper editor who had published a news item in his newspaper. The witness refused to disclose his source of information, despite being asked several times by the union counsel to do so. The Board ruled that the question was relevant and not a privileged matter and ordered the witness to answer the question asked. In the face of continued refusal by the witness, at the request of the union, the Board stated a case under *The Statutory Powers Procedure Act, 1971*. The application was granted, the court finding the witness in contempt and sentencing him to a maximum imprisonment of three months or until he answers the question asked, if he continued to refuse. At a Board hearing convened subsequently, the parties settled the matter and the question put to the witness was withdrawn. Based on this settlement the court order was rescinded.

## VII CASELOAD

In fiscal year 1980-81, the Board received a total of 2,836 applications and complaints, an increase of 354 cases, or 14 percent above the intake of 2,482 cases in 1979-80. Most of the increase, 294 cases, occurred in filings of complaints of contravention of the Act and referrals of grievances under construction industry collective agreements. (Tables 1 and 2). In addition, 453 cases were carried over from the previous year, making a total caseload of 3,289 in 1980-81. Of this total, 2,711 or 82 percent were disposed of, compared to 78 percent of the lighter caseload of 2,879 in 1979-80. Of the remaining cases, proceedings in 129 were adjourned sine die (without a fixed date for further action) at the request of the parties (The Board regards "sine die" cases as disposed of although they are kept on the docket for one year.) and 449 were pending in various stages of processing at March 31, 1981.

The total number of cases processed during the year produced an average workload of 411 cases for the Board's full-time chairmen and vice-chairmen, and the total dispositions represented an average output of 339 cases.

### Labour Relations Officers Activity

In 1980-81, Labour Relations Officers were assigned a total of 1,451 cases to assist the parties involved. (Table 3). The number comprised 44 percent of the Board's total caseload, and included 211 certification applications, 31 cases relating to the status of employees, 678 complaints of contravention of the Act, 491 grievances under construction industry collective agreements, and 40 complaints under *The Occupational Health and Safety Act*. Officer activity was completed in 1,137 cases, with settlements reached by the parties in 72 percent; was adjourned sine die in 68 cases; and was continuing in the remaining 246 cases at the end of the year.

In addition Labour Relations Officers were successful in having the parties waive the hearings in 205 or 76 percent of 269 certification applications assigned, and in settling disputes on the bargaining unit in another 182 cases or 62 percent of 292 cases assigned at the hearing.

Table 4 provides statistics on settlements obtained by Labour Relations Officers in cases disposed of in 1980-81, in which the Officers play the primary role in the processing of the case, as opposed to cases in which new assignments were made during the year. The table shows that the Officers achieved an overall settlement rate of 79 percent of the total 1,196 cases involved. The rate was substantially higher in construction industry grievances, 87 percent, and in complaints under *The Occupational Health and Safety Act*, 89 percent. In complaints of contravention of the Act the settlement rate was 76 percent.

### Representation Votes

Returning Officers conducted and counted the results of 276 votes held among employees in one or more bargaining units in 247 cases which were either disposed of during the year or in which a final decision closing the case had not been issued by the Board by March 31, 1981. Of the total votes, 229 involved certification applications, 44 were held in termination of bargaining rights cases, and 3 in successor employer cases. (Table 5). A total of 16,181 employees were eligible to participate in the 276 votes, and 14,276 or 88 percent of them cast

their ballots. Of the 14,276 employees who voted 51 percent cast ballots in favour of the applicant union.

### **Hearings**

The Board held a total of 1,920 hearings and continuation of hearings in 2,090 of the 3,289 cases processed during the fiscal year, an increase of 71 sittings more than the number held in 1979-80. One hundred and thirteen of the hearings were conducted by vice-chairmen sitting alone, compared to 24 hearings in 1979-80.

### **Processing Time**

Table 7 provides statistics on the time required to process the 2,711 cases disposed of by the Board in 1980-81. Information is provided separately for the three major groups of cases handled by the Board: certification applications, complaints of contravention of the Act, and referrals of grievances under construction industry collective agreements.

A median time of 34 calendar days were taken to process the 2,711 cases completed from receipt to disposition. The same processing time was required for complaints of contravention of the Act, but certification applications required 33 days, referrals of construction industry grievances took 21 days, and all other types needed 49 days. Eighty-one percent of all cases were disposed of in 84 days (three months) or less, compared to 85 percent for certification applications, 78 percent for complaints of contravention of the Act, 83 percent for referrals of construction industry grievances, and 70 percent for all other cases. Nine percent of all cases required more than 168 days (six months) to complete compared to 8 percent or slightly more for the three major groups of cases, and 12 percent for all other types.

### **Certification**

Applications for certification of trade unions as bargaining agents of employees constitute the largest group of the cases brought to the Board. The proportion of these applications to the total number of cases received has, however, declined steadily since 1975-76, from 58 percent to 41 percent in 1980-81. (Table 2).

In 1980-81, the Board received 1,152 certification applications, 16 cases more than in 1979-80; (Tables 1 and 2). the applications were filed by 109 trade unions, including 48 employee associations. (Table 8). Eight of the unions, however, accounted for 65 percent of the total certification applications: The Labourers (130 cases), Public Employees (CUPE) (119 cases), Carpenters (81 cases), International Operating Engineers (72 cases), Service Employees International (69 cases), Steelworkers (61 cases), Teamsters (61 cases), and Food and Commercial Workers (54 cases). In contrast, 71 percent of the unions filed fewer than five applications each, with the majority making only one application. These unions together accounted for only 8 percent of the total certification filings.

Table 9 gives the industrial distribution of the intake of certification applications for the year. Non-manufacturing establishments accounted for 78 percent of the intake, concentrated in construction (291 cases), health and welfare services (187 cases), accommodation and food services (78 cases), retail trade (56 cases), and transportation (49 cases). These five industries comprised 74 percent of the total non-manufacturing applications. Of the 256 applications



involving establishments in manufacturing industries, 51 percent were in food and beverage (40 cases), metal fabricating (37 cases), paper and allied products (27 cases), and non-electrical machinery (26 cases).

In addition to the applications received, 191 cases were carried over from the previous year, making a total certification caseload of 1,343. Of this total, 1,178 were disposed of, 11 were adjourned sine die, and the remaining 154 were pending at March 31, 1981. Of the 1,178 dispositions, certification was granted in 823 cases, including 83 in which interim certificates were issued under section 6(1a) of the Act, and 6 that were certified under section 7a; 185 cases were dismissed; proceedings were terminated in 15, and 155 were withdrawn. The certified applications represented 70 percent of the total dispositions, compared to 72 percent in 1979-80.

In 190 applications that were either certified or dismissed final decisions on bargaining units were based on the results of representation votes. (Table 6). Of the 197 votes conducted, 119 involved a single union, and 78 were held between the applicant union and an incumbent bargaining agent. The applicant won in 101 of the votes and lost in 96. A total of 12,317 employees were eligible to participate in the vote, and 10,915 or 89 percent of them cast their ballots. In the 101 votes that were won and resulted in certification 5,797 or 85 percent of the 6,798 employees eligible to vote cast their ballots, and of those who voted, 4,187 or 72 percent favoured the applicant unions. In the 96 votes that were lost and resulted in dismissal 5,118 or 93 percent of the eligible employees participated in the vote, and of the participants 1,788 or 35 percent voted in favour of the applicant unions.

Small bargaining units remained the predominant pattern of union organizing efforts through the certification process. The average size of the units in the 823 applications that were certified in 1980-81 was 30 employees, compared to 33 employees in 1979-80. (Table 10). Units in construction certifications average 6 employees, compared to 5 employees in 1979-80, and those in non-construction certifications averaged 37 employees, compared to 42 employees in 1979-80. Seventy-nine percent of the total certifications, including all except two in construction, involved units of fewer than 40 employees, and 43 percent applied to units of fewer than 10 employees. The total number of employees covered by the 823 certified applications dropped to 24,658 from 24,685 in 1979-80.

Table 11 shows the time taken by the Board to process the 823 applications in which certification was granted. A median time of 31 calendar days were required to complete these cases from receipt to disposition, compared to 26 days in 1979-80. For non-construction certifications the median time was 33 days, compared to 27 days in 1979-80; and for construction certifications the median time was 21 days, compared to 17 days last year. Eighty-eight percent of the 1980-81 certified cases took 84 days (three months) or less to process from receipt to disposition, 81 percent took 56 days (two months) or less, 44 percent took 28 days (one month) or less, 21 percent required 21 days (three weeks) or less, and 50 cases needed longer than 168 days (six months). In 1979-80, a higher proportion of certified cases was completed in each time-period under six months, and fewer cases took longer than six months.

The general increase in the processing time of certified applications in 1980-81 occurred mainly as a result of the Board shifting its hearing day for certification applications from Tuesday to Friday, and lengthening the terminal date by two days without a corresponding adjustment of the scheduling date by which time limits are set each week for new applications. This situation was corrected in February and other procedural changes have been made to

expedite the handling of certification cases. As a result, a substantial reduction in the processing time of certification cases occurred in the latter part of the year.

### **Termination of Bargaining Rights**

The Board received 104 applications during the fiscal year under sections 49, 51, 52, 53 and 112 of the Act, seeking termination of the bargaining rights of trade unions, an increase of 34 cases above the number filed in 1979-80. In addition, 19 cases were carried over from last year. Of the 123 total, bargaining rights were terminated by the Board in 60 cases, 32 cases were dismissed, proceedings were terminated in 4 cases, and 16 cases were withdrawn. Twelve cases were pending at the close of the year. Unions lost the right to represent 1,160 employees in the 60 cases in which termination was granted, but retained that right for 1,765 employees in the 48 cases that were either dismissed or withdrawn.

Of the 92 cases that were either granted or dismissed, dispositions in 40 cases, 43 percent, were based on the results of representation votes, compared to 44 percent of such cases in 1979-80. A total of 1,066 employees were eligible to participate in the 41 votes that were held, of whom 943 or 88 percent, cast their ballots. (Table 6). In the 31 votes held in last year's cases, 80 percent of the 2,032 employees eligible to vote participated.

### **Declaration of Successor Trade Union**

In 1980-81, the Board dealt with 25 applications under section 54 of the Act, concerning the bargaining rights of a successor trade union resulting from a union merger situation, compared to 12 cases in 1979-80. Affirmative declarations were issued by the Board in 24 cases, and the remaining case was pending at March 31, 1981.

### **Declaration of Successor or Common Employer**

The Board dealt with 88 applications for declarations under section 55 of the Act on the bargaining rights of a trade union as a successor employer resulting from a business sale, or for declarations under section 1(4) to treat two companies as one employer. The two types of requests are often made in a single application. One application was also received under section 4 of *The Successor Rights (Crown Transfers) Act*.

Affirmative declarations were issued by the Board in 31 cases, including 3 in which representation votes were held; 14 cases were either settled or withdrawn by the parties; 9 cases were dismissed; and proceedings were terminated in 5 cases. Of the remaining cases, 13 were adjourned sine die, and 16 were pending at the end of the year. In the 3 cases involving representation votes, 371 of the 521 employees who are eligible to vote participated in the vote. (Table 6).

### **Accreditation of Employer Organization**

Six applications were processed under sections 113, 114 and 115 of the Act for accreditation of the employer organizations as bargaining agents of employers in the construction industry. Accreditation was granted in one case to represent 26 construction companies employing 231 construction workers. Proceedings were terminated in two cases, two cases were withdrawn, and one was pending at March 31, 1981.

## **Declaration and Direction of Unlawful Strike**

In 1980-81, the Board dealt with 77 applications seeking declarations or directions under section 82 of the Act against alleged unlawful strikes in non-construction industries. Directions were issued in 10 cases, 5 cases were dismissed, proceedings were terminated in 4 cases, and 28 cases were withdrawn. Of the remaining cases, 29 were adjourned sine die, and one was pending at March 31, 1981.

Seven applications were also processed during the year seeking directions under section 123(1) of the Act against alleged unlawful strikes affecting the construction industry. A direction was issued in one case, one case was dismissed, four were withdrawn, and one was pending at the end of the year.

## **Declaration and Direction of Unlawful Lockout**

Ten applications processed during the year sought declarations or directions by the Board under section 83 of the Act against alleged unlawful lockouts by non-construction employees. A declaration was issued in one case, one case was dismissed, proceedings were terminated in one case, four cases were withdrawn, two were adjourned sine die, and one was pending at year end.

## **Consent to Prosecute**

In 1980-81, the Board received 29 applications under section 90 of the Act, requesting consent to institute prosecution in Provincial Court against trade unions and employers for commission of an offence under the Act. The number of these applications has declined considerably since 1975 with the expansion of the Board's remedial authority under section 79 of the Act. Many applications which were filed under section 90 prior to 1975, particularly those alleging failure to bargain in good faith, are now made under section 79. The Board also received two applications under sections 76 and 90 of *The Colleges Collective Bargaining Act*.

Of the 29 applications processed, which included 7 carried over from the previous year, 23 were disposed of, 5 were adjourned sine die, and one was pending at March 31, 1981. Of the cases disposed of, consent to prosecute was granted by the Board in one case, consent was denied in six cases, proceedings were terminated in two cases, and fourteen cases were withdrawn.

## **Contravention of the Act**

Complaints filed under section 79 of the Act alleging contravention of the Act form the second largest group of cases processed by the Board. The number of these cases has increased substantially since 1975. (Table 2). In these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a Labour Relations Officer.

In 1980-81, the Board received 704 section 79 complaints, an increase of 16 percent above the number in 1979-80. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees (sections 56 and 58 of the Act), illegal changes in wages and working conditions (section 70), and failure to bargain in good faith (section 14), and were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly (section 60).



In addition to the complaints received, 132 cases were carried over from 1979-80, and one was filed under section 78 of *The Colleges Collective Bargaining Act*. Of the 837 total, 704 were disposed of, 21 were adjourned sine die, and 112 were pending at March 31, 1981. In 532, or 76 percent of the cases disposed of voluntary settlements including withdrawal of the complaint in 63 cases, were secured by Labour Relations Officers, remedial orders were issued by the Board in 62 cases, 97 cases were dismissed by the Board, and proceedings were terminated in the remaining 13.

In the settlements secured by Labour Relations Officers, compensation amounting to more than \$155,000 was awarded to aggrieved employees, as well as directions to reinstate in many cases. In the 62 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay specific compensation to 13 employees totalling \$34,587.81, and full compensation to another 77 employees for all wages and benefits lost within a period of time. Seventy-five of the 90 employees were also ordered reinstated, as well as 12 other employees for whom monetary remedy was not awarded. In addition, employers in 11 cases were ordered to post a Board notice of the employees' rights under the Act. The Board also issued cease and desist directions in three cases.

### **Construction Industry Grievances**

Grievances over alleged violations of provisions of collective agreements in the construction industry may be referred to the Board for resolution under section 112a of the Act. These referrals comprise the third largest group of cases handled by the Board. As with complaints of contravention of the Act, the Board emphasizes voluntary settlements of these cases by the parties, with the assistance of Labour Relations Officers.

In 1980-81, the Board received 517 cases under section 112a, an increase of 61 percent above the number in 1979-80. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension, and vacation funds and deduction of union dues, and violation of the subcontracting and hiring arrangements established by the collective agreement.

In addition to the grievances received, 47 cases were carried over from 1979-80. Of the total, 421 were disposed of, 43 were adjourned sine die, and 100 were pending at March 31, 1981. In 367, or 87 percent of the cases disposed of voluntary settlements including withdrawal of the grievance in 46 cases, were secured by Labour Relations Officers, awards were made by the Board in 30 cases, 21 cases were dismissed by the Board, and proceedings were terminated in 3 cases. Specified payments totalling in excess of \$643,000 were recovered for unions and employees in both the cases settled by Labour Relations Officers and those in which Board awards were made.

### **Miscellaneous Applications and Complaints**

#### **Religious Exemption**

Fifteen applications were received in 1980-81 under section 39 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemption was granted in eleven of the cases, one case was dismissed and three were withdrawn.

## **Early Termination of Collective Agreement**

Twenty-one applications were processed under section 44(3) of the Act, seeking early termination of collective agreements. Consent was granted in eighteen cases, proceedings were terminated in one case, one case was adjourned sine die, and one was pending at March 31, 1981.

## **Union Financial Statements**

Nine complaints were dealt with under section 76 of the Act, alleging failure by trade unions to furnish members with audited financial statements on the union's affairs. Two cases were dismissed, proceedings were terminated in one case, one case was withdrawn and five were pending at March 31, 1981.

## **Jurisdictional Disputes**

Twenty-four complaints were dealt with by the Board under section 81 of the Act during the fiscal year, involving union work jurisdiction. An assignment of the work in dispute was made by the Board in two cases, three cases were dismissed, proceedings were terminated in one case and eight cases were withdrawn. One case was adjourned sine die, and nine were pending at March 31, 1981.

## **Employee Status**

The Board dealt with 66 applications under section 95(2) of the Act, seeking decisions on the status under collective agreements of employees in occupational classifications that were changed or newly established. Six of the cases were filed under section 82 of *The Colleges Collective Bargaining Act*. Twenty-three of the cases including five withdrawals were settled by the parties in discussions with Labour Relations Officers. Determinations were made by the Board in 17 cases, in which 17 of the 38 employees in dispute were found to be employees under the Act, and 21 were found not to be employees. Two cases were held by the Board to be subjects for arbitration and were dismissed, one case was adjourned sine die, and 21 were pending at March 31, 1981.

## **Referrals by Minister of Labour**

In 1980-81, the Board dealt with nine cases referred by the Minister under section 96 of the Act for opinions on questions relating to the Minister's authority to appoint a conciliation officer under section 15 of the Act, or an arbitrator under section 37(4) or 37a. Determinations were made in two cases in which the Board declared the Minister's authority to appoint a conciliation officer, one case was settled by the parties, proceedings were terminated in five cases, and one case was pending at March 31, 1981.

The Board also made a determination in one case referred by the Minister under section 127(4) of the Act for a decision in a dispute over the successor rights of a designated construction union bargaining agency. The agency's rights were upheld.

### **Trusteeship Reports**

Two statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

### **The Occupational Health and Safety Act**

In 1980-81, the Board received 40 complaints under section 24 of *The Occupational Health and Safety Act*, alleging wrongful discipline or discharge of employees for acting in compliance with the Act. In contrast, 10 of such cases were received in 1979-80. In addition to the cases received in 1980-81, two were carried over from 1979-80.

Of the total processed, 24 including 2 in which the complaint was withdrawn, were settled by the parties in discussions with Labour Relations Officers, 2 were dismissed by the Board and proceedings were terminated in one case. Of the remaining 15 cases, 2 were adjourned sine die, and 13 were pending at March 31, 1981.

### **The Colleges Collective Bargaining Act**

In 1980-81, the Board dealt with two complaints brought under section 78 of *The Colleges Collective Bargaining Act*, alleging contravention of this Act. One case was settled with the assistance of a Labour Relations Officer, and one was dismissed.

Two cases were filed under sections 76 and 90 of the Act, requesting consent to prosecute. Both were dismissed.

Six applications were made under section 82 of the Act for decisions on the status of employees under a collective agreement. A determination was made in one case in which the employee in dispute was found to be included in the bargaining unit.

Statistics on the cases under *The Colleges Collective Bargaining Act* dealt with by the Board are included in Table 1.



## VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

*The Ontario Labour Relations Board Report*, a monthly publication of selected Board decisions and containing other information and statistics on proceedings before the Board.

*A Guide to the Ontario Labour Relations Act*, a booklet explaining in laymen's terms the provisions of *The Labour Relations Act* and the Board's practices.

*Rules of Procedure, Regulations and Practice Notes* (Queen's Printer), a consolidation of the Rules of Procedure and Regulations enacted under *The Labour Relations Act* and containing all of the Board's practice notes.

## **IX       STAFF AND BUDGET**

At the end of the fiscal year 1980-81, the Board employed a total of 106 persons. The Board has two types of employees. The Chairman, Alternate-Chairman, Vice-Chairmen and Board Members are appointed by the Lieutenant Governor in Council. The support staff employees are civil service appointees. Of the total workforce, 63 employees were civil service appointees, while the other 43 were appointed by order-in-council.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$2,525,000.00.

## X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1980-81.

- Table 1: Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1980-81.
- Table 2: Applications and Complaints Received and Disposed of, Fiscal Years 1976-1977 to 1980-81.
- Table 3: Labour Relations Officer Case Activity, Fiscal Year 1980-81.
- Table 4: Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1980-81.
- Table 5: Results of All Representation Votes Conducted, Fiscal Year 1980-81.
- Table 6: Results of Representation Votes in Cases Disposed of, Fiscal Year 1980-81.
- Table 7: Time Required to Process Applications and Complaints Disposed of, Fiscal Year 1980-81.
- Table 8: Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1980-81.
- Table 9: Industry Distribution of Certification Applications Received and Disposed of, Fiscal Year 1980-81.
- Table 10: Size of Bargaining Units in Certification Applications Granted, Fiscal Year 1980-81.
- Table 11: Time Required to Process Certification Applications Granted, Fiscal Year 1980-81.



Table 1

**Total Applications and Complaints Received, Disposed of and Pending  
Fiscal Year 1980-81**

	Case load			Disposed of Fiscal Year 1980-81							Pending March 31, 81
	Total	Pending April 1, 80	Received Fiscal Year 1980-81	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die	
<b>Total</b>	<b>3,289</b>	<b>453</b>	<b>2,836</b>	<b>2,711</b>	<b>1,094</b>	<b>366</b>	<b>61</b>	<b>353</b>	<b>838</b>	<b>129</b>	<b>449</b>
Certification of Bargaining agents	1,343	191	1,152	1,178	823	185	15	155	—	11	154
Declaration of Termination of Bargaining Rights	123	19	104	111	60	32	3	16	—	—	12
Declaration of Successor Trade Union	25	2	23	24	24	—	—	—	—	—	1
Declaration of Successor Employer or Common Employer Status	88	19	69	59	31	9	5	7	7	13	16
Accreditation	6	4	2	5	1	—	2	2	—	—	1
Declaration of Unlawful Strike	1	—	1	1	—	—	1	—	—	—	—
Declaration of Unlawful Lock-out	7	2	5	6	1	—	1	4	—	—	1
Direction respecting Unlawful Strike	76	3	73	46	10	5	3	28	—	29	1
Direction respecting Unlawful Lock-out	3	—	3	1	—	1	—	—	—	2	—
Consent to Prosecute	29	7	22	23	1	6	2	14	—	5	1
Contravention of Act	837	132	705	704	62	97	13	63	469	21	112
Exemption from Union Security Provision in Collective Agreement	15	—	15	15	11	1	—	3	—	—	—
Early Termination of Collective Agreement	21	1	20	19	18	—	1	—	—	1	1
Trade Union Financial Statement	9	3	6	4	—	2	1	1	—	—	5
Jurisdictional Dispute	24	4	20	14	2	3	1	8	—	1	9
Referral on Employee Status	66	15	51	44	17	2	4	4	18	1	21
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	9	1	8	8	2	—	5	—	1	—	1
Referral of Construction Industry Grievance	564	47	517	421	30	21	3	46	321	43	100
Referral from Minister on Construction Bargaining Agency	1	1	—	1	1	—	—	—	—	—	—
Complaint under Occupational Health and Safety Act	42	2	40	27	—	2	1	2	22	2	13

\* Includes cases in which a request was granted or a determination made by the Board.

**Table 2****Applications and Complaints Received and Disposed of  
Fiscal Years 1976-77 to 1980-81**

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1976-77	1977-78	1978-79	1979-80	1980-81	Total	1976-77	1977-78	1978-79	1979-80	1980-81
<b>Total</b>	<b>11,737</b>	<b>2,205</b>	<b>2,035</b>	<b>2,179</b>	<b>2,482</b>	<b>2,836</b>	<b>10,761</b>	<b>1,974</b>	<b>1,757</b>	<b>2,071</b>	<b>2,248</b>	<b>2,711</b>
Certification of bargaining agents	5,283	1,029	947	1,019	1,136	1,152	5,207	1,014	890	1,022	1,103	1,178
Declaration of termination of bargaining rights	451	84	78	115	70	104	445	72	80	110	72	111
Declaration of successor trade union or employer	300	70	51	74	50	55	281	56	55	61	55	54
Declaration of common employer status	113	7	17	22	30	37	96	7	6	26	28	29
Accreditation	10	2	3	—	3	2	13	2	2	1	3	5
Declaration of unlawful strike or lock-out	63	18	15	9	15	6	50	8	12	12	11	7
Direction respecting unlawful strike or lock-out	401	90	73	84	78	76	273	61	52	62	51	47
Consent to prosecute	271	77	67	57	48	22	233	63	45	52	50	23
Contravention of Act	2,632	460	406	454	607	705	2,372	402	342	402	522	704
Referral of construction industry grievance	1,613	273	264	238	321	517	1,259	210	198	203	227	421
Miscellaneous	600	95	114	107	124	160	532	79	75	120	126	132

**Table 3**
**Labour Relations Officer Case Activity**  
**Fiscal Year 1980-81**

<b>Type of Case</b>	<b>Total Cases Assigned</b>	<b>Number of Cases in Which Activity</b>		
		<b>Completed</b>	<b>Pending</b>	<b>Sine Die</b>
<b>Total</b>	<b>1,451</b>	<b>1,137</b>	<b>246</b>	<b>68</b>
Certification				
Interim certificate	77	47	20	10
Pre-hearing application	94	77	17	—
Other application	40	35	5	—
Contravention of Act	678	575	85	18
Construction industry grievance	491	359	95	37
Employee status	31	20	11	—
Occupational Health and Safety Act	40	24	13	3



**Table 4**
**Labour Relations Officer Settlements in Cases Disposed of\***  
**Fiscal Year 1980-81**

<b>Type of Case</b>	<b>Total Disposed of</b>	<b>Officer Settlements</b>	
		<b>Number</b>	<b>Percent of Dispositions</b>
<b>Total</b>	<b>1,196</b>	<b>945</b>	<b>79.0</b>
Contravention of Act	704	532	75.6
Construction industry grievance	421	367	87.2
Employee status	44	22	50.0
Occupational Health and Safety Act	27	24	88.9

\* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

**Table 5****Results of Representation Votes Conducted\***  
**Fiscal Year 1980-81**

<b>Type of Case</b>	<b>Number of Votes</b>	<b>Eligible Employees</b>	<b>Votes Cast</b>	<b>Votes Cast in Favour of Unions</b>
<b>Total</b>	<b>276</b>	<b>16,181</b>	<b>14,276</b>	<b>7,291</b>
Certification	229	14,473	12,851	6,816
Pre-hearing cases				
One union	48	4,012	3,430	1,561
Two unions	54	4,509	4,094	2,643
Three unions	1	234	210	175
Construction cases				
One union	1	5	4	—
Two unions	9	158	134	49
Two unions, with "no union" choice	1	2	2	2
Regular cases				
One union	84	3,306	2,946	1,467
Two unions	31	2,247	2,031	919
Termination of Bargaining Rights	44	1,187	1,054	203
Successor Employer	3	521	371	272

\* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

**Table 6****Results of Representation Votes In Cases Disposed of\***  
**Fiscal Year 1980-81**

Type of Case	Number of Votes			Eligible Voters			All Votes Cast			Votes Cast in Favour of Unions		
	Total	Won	Lost	Total	In Votes		Total	In Votes		Total	In Votes	
					Won	Lost		Won	Lost		Won	Lost
<b>Total</b>	<b>241</b>	<b>105</b>	<b>136</b>	<b>13,904</b>	<b>7,340</b>	<b>6,564</b>	<b>12,229</b>	<b>6,186</b>	<b>6,043</b>	<b>6,392</b>	<b>4,468</b>	<b>1,924</b>
Certification	197	101	96	12,317	6,798	5,519	10,915	5,797	5,118	5,975	4,187	1,788
Pre-hearing cases												
One union	39	18	21	3,390	1,528	1,862	2,881	1,107	1,774	1,338	698	640
Two unions	58	34	24	4,872	2,819	2,053	4,439	2,579	1,860	2,811	2,117	694
Construction cases												
One union	1	—	1	5	—	5	4	—	4	—	—	—
Two unions	9	3	6	142	15	127	122	15	107	39	11	28
Regular cases												
One union	79	37	42	3,424	1,983	1,441	3,045	1,701	1,344	1,504	1,088	416
Two unions	11	9	2	484	453	31	424	395	29	283	273	10
Termination of Bargaining Rights	41	1	40	1,066	21	1,045	943	18	925	145	9	136
Successor Employer	3	3	—	521	521	—	371	371	—	272	272	—

\* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.



Table 7

**Time Required to Process Applications and Complaints Disposed of, by Major Type of Case  
Fiscal Year 1980-81**

Time Taken (Calendar Days)	All Cases		Certification Cases		Section 79 Cases		Section 112a Cases		All Other Cases	
	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent
<b>Total</b>	<b>2,711</b>	<b>100.0</b>	<b>1,178</b>	<b>100.0</b>	<b>704</b>	<b>100.0</b>	<b>421</b>	<b>100.0</b>	<b>408</b>	<b>100.0</b>
Under 8 days	108	4.0	18	1.5	34	4.8	19	4.5	37	9.1
8-14 days	296	14.9	93	9.4	55	12.6	131	35.6	17	13.3
15-21 days	353	27.9	171	23.9	86	24.8	73	52.9	23	19.0
22-28 days	387	42.2	217	42.3	103	39.4	32	60.5	35	27.6
29-35 days	328	54.3	174	57.1	98	53.3	15	64.1	41	37.7
36-42 days	200	61.7	95	65.2	65	62.5	18	68.4	22	43.1
43-49 days	163	67.7	76	71.7	30	66.8	20	73.1	37	52.2
50-56 days	103	71.5	55	76.4	24	70.2	12	75.9	12	55.1
57-63 days	75	74.2	25	78.5	21	73.2	14	79.2	15	58.5
64-70 days	63	76.5	35	81.5	10	74.6	4	80.2	14	61.9
71-77 days	50	78.3	19	83.1	10	76.0	6	81.6	15	65.6
78-84 days	60	80.5	25	85.2	12	77.8	5	82.8	18	70.0
85-91 days	29	81.6	4	85.5	12	79.5	4	83.8	9	72.2
92-98 days	37	83.0	14	86.7	12	81.2	3	84.5	8	74.2
99-105 days	34	84.2	9	87.5	10	82.6	6	85.9	9	76.4
106-126 days	80	87.2	24	89.5	18	85.2	15	89.5	23	82.1
127-147 days	57	89.3	13	90.6	23	88.5	5	90.7	16	86.0
148-168 days	53	91.3	17	92.0	22	91.6	5	91.9	9	88.2
Over 168 days	235	100.0	94	100.0	59	100.0	34	100.0	48	100.0

Table 8

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1980-81**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Unions</b>	<b>1,152</b>	<b>1,178</b>	<b>823</b>	<b>200</b>	<b>155</b>
<b>CLC Affiliates</b>	<b>954</b>	<b>985</b>	<b>688</b>	<b>156</b>	<b>141</b>
Auto Workers	19	23	19	3	1
Bakery Workers	3	4	3	—	1
Boilermakers	3	2	1	—	1
Brewery Workers	23	24	14	3	7
Bricklayers	2	2	—	2	—
CLC Directly Chartered Unions	10	9	4	2	3
Canadian Paper Workers	20	20	10	4	6
Carpenters	81	80	54	8	18
Cement Workers	20	6	3	2	1
Clothing Workers	11	10	9	1	—
Electrical Workers (IBEW)	3	2	1	—	1
Electrical Workers (IUE)	23	24	20	2	2
Electrical Workers (UE)	7	9	7	2	—
Energy and Chemical Workers	10	10	5	2	3
Food Workers	54	60	43	13	4
Garment Workers (United)	1	2	1	1	—
Garment Workers, Ladies	2	2	2	—	—
Glass and Ceramic Workers	1	1	1	—	—
Graphic Arts Union	11	13	11	2	—
Hotel Employees	29	27	16	4	7
Labourers	130	142	90	23	29
Laundry Workers	1	2	1	1	—
Leather and Plastic Workers	1	1	1	—	—
Machinists	10	10	8	1	1
Merchant Service Guild	1	1	—	—	1
Molders	1	2	1	1	—
Newspaper Guild	3	3	2	1	—
Novelty Workers	2	2	1	—	1
Office and Professional Employees	12	10	10	—	—
Operating Engineers, Inter- national	72	73	50	12	11
Painters	16	16	13	2	1
Plasterers	3	4	1	2	1
Plumbers	9	11	7	1	3
Printing and Graphic Union	—	2	—	2	—
Public Employees (CUPE)	119	120	88	17	15
Railway Clerks	6	6	2	2	2

Table 8 (cont.)

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1980-81**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
Public Service Employees (Ont.)	35	42	33	4	5
Railway Transport and General Workers	8	11	9	1	1
Retail Wholesale Employees	32	28	24	4	—
Rubber Workers	2	3	1	2	—
Seafarers	1	1	1	—	—
Service Employees	69	78	58	15	5
Sheet Metal Workers	4	2	1	1	—
Steelworkers	61	65	51	7	7
Structural Iron Workers	14	12	6	3	3
Theatrical Stage Employees	1	—	—	—	—
Transit Union	1	1	—	1	—
Typographical Union	4	5	5	—	—
United Paperworkers	1	1	—	1	—
Woodworkers	2	1	—	1	—
<b>Non-CLC Affiliates</b>	<b>198</b>	<b>193</b>	<b>135</b>	<b>44</b>	<b>14</b>
Allied Health Professionals	3	2	—	2	—
Canadian Industrial Employees	1	—	—	—	—
Canadian Restaurant Employees	9	10	9	1	—
Christian Labour Association	27	29	21	7	1
Food and Associated Service Workers	1	1	1	—	—
Graduate Assistants Association	—	2	1	—	1
National Council of Canadian Labour	2	1	1	—	—
Ontario Nurses' Association	28	25	22	3	—
Operating Engineers, Canadian	15	15	10	4	1
Plant Guard Workers	1	1	1	—	—
Professional Institute	1	—	—	—	—
Teamsters	61	62	45	9	8
Textile and Chemical Union	1	1	1	—	—
Independent Local Unions	48	44	23	18	3



Table 9

**Industry Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1980-81**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Industries</b>	<b>1,152</b>	<b>1,178</b>	<b>823</b>	<b>200</b>	<b>155</b>
Manufacturing	256	264	175	55	34
Food, beverages	40	40	25	9	6
Tobacco products	—	—	—	—	—
Rubber, plastic products	6	6	2	3	1
Leather industries	5	3	2	1	—
Textile mill products	8	6	5	1	—
Knitting mills	3	3	3	—	—
Clothing industries	7	8	5	2	1
Wood products	2	4	3	1	—
Furniture, fixtures	6	3	1	—	2
Paper, allied products	27	29	13	9	7
Printing, publishing	16	18	16	2	—
Primary metal industries	6	8	7	1	—
Metal fabricating industries	37	39	23	8	8
Machinery, except electrical	26	27	18	6	3
Transportation equipment	14	12	10	2	—
Electrical products	16	18	14	3	1
Non-metallic mineral products	17	17	10	3	4
Petroleum, coal products	—	—	—	—	—
Chemical, chemical products	12	14	10	3	1
Miscellaneous manufacturing	8	9	8	1	—
<b>Non-Manufacturing</b>	<b>896</b>	<b>914</b>	<b>648</b>	<b>145</b>	<b>121</b>
Agriculture	1	3	—	2	1
Forestry	—	—	—	—	—
Mining, quarrying	7	8	6	—	2
Construction	291	291	187	50	54
Transportation	49	57	36	13	8
Storage	7	8	7	—	1
Communications	—	—	—	—	—
Electric, gas, water	13	14	10	3	1
Wholesale trade	38	36	28	4	4
Retail trade	56	60	52	5	3
Finance, insurance, real estate	27	20	17	2	1
Education, related services	31	35	25	4	6
Health, welfare services	187	193	150	30	13
Religious organizations	1	1	1	—	—
Recreational services	12	13	10	2	1
Business services	18	19	12	5	2
Personal services	6	6	4	2	—
Accommodation, food services	78	76	53	13	10
Miscellaneous service	36	38	24	5	9
Local government	38	36	26	5	5

**Table 10**
**Size of Bargaining Units in Certification Applications Granted**  
**Fiscal Year 1980-81**

Size of Bargaining Unit (Number of Employees)	Total		Construction		Non-Construction	
	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees
<b>Total, all sizes</b>	<b>823</b>	<b>24,658</b>	<b>187</b>	<b>1,062</b>	<b>636</b>	<b>23,596</b>
2 - 9 employees	357	1,685	163	633	194	1,052
10 - 91 employees	156	2,165	16	202	140	1,963
20 - 39 employees	139	4,016	6	138	133	3,878
40 - 99 employees	123	7,569	2	89	121	7,480
100 - 199 employees	35	4,795	—	—	35	4,795
200 - 499 employees	10	2,613	—	—	10	2,613
500 employees or more	3	1,815	—	—	3	1,815

**Table 11**
**Time Required to Process Certification Applications Granted\***  
**Fiscal Year 1980-81**

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Percent	Number	Cumulative Percent	Number	Cumulative Percent
<b>Total</b>	<b>823</b>	<b>—</b>	<b>636</b>	<b>—</b>	<b>187</b>	<b>—</b>
Under 8 days	—	—	—	—	—	—
8-14 days	59	7.2	4	0.6	55	29.4
15-21 days	115	21.2	76	12.5	39	50.3
22-28 days	185	43.7	171	39.4	14	57.8
29-35 days	154	62.4	143	61.9	11	63.7
36-42 days	68	70.7	61	71.5	7	67.4
43-49 days	51	76.9	43	78.3	8	71.7
50-56 days	34	81.0	31	83.2	3	73.3
57-63 days	15	82.8	11	84.9	4	75.4
64-70 days	17	84.9	14	87.1	3	77.0
71-77 days	11	86.2	9	88.5	2	78.1
78-84 days	15	88.0	11	90.2	4	80.2
85-91 days	—	88.0	—	90.2	—	80.2
92-98 days	10	89.2	8	91.6	2	81.3
99-105 days	6	89.9	5	92.4	1	81.8
106-126 days	17	92.0	13	94.4	4	83.9
127-147 days	7	92.9	5	95.2	2	85.0
148-168 days	9	94.0	4	95.8	5	87.7
169 days and over	50	100.0	27	100.0	23	100.0

\* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.



## APPENDIX

### Case Control Management of The Ontario Labour Relations Board

#### 1. Introduction

We thought it would be useful to discuss an important aspect of labour board administration — case management. All boards throughout Canada are experiencing substantial increases in caseload. As creatures of statute, such agencies are confronted with the demands of the parties for quick justice and a growing reluctance by government to spend more public funds. Effective case management is therefore necessary to use existing resources as efficiently as possible and to provide reliable information to make a convincing case for additional resources where required. What follows is a very brief outline of the key elements in the O.L.R.B.'s case management system as it has evolved to date. However, we should also add that there are independent labour relations reasons for effective case management. Delay in processing labour relations matters can cause its own disruption of labour relations and reflect negatively on the community's perceptions of the Labour Relations Board. By providing an effective case management system that ensures maximum productivity and service to the community, the Board will be seen by management and labour as encouraging the development of labour harmony.

#### 2. Trends in Caseload

The following table indicates the Board's caseload over the past three years:

APPLICATIONS AND COMPLAINTS RECEIVED BY THE  
ONTARIO LABOUR RELATIONS BOARD  
FISCAL YEARS 1978-79 to 1980-81

<u>Type of Case</u>	<u>Number Received, Fiscal Year</u>			
	<u>Total</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>
Certifications	3307	1019	1136	1152
Unfair Labour Practice Complaints	1766	454	607	705
Grievances in the Construction Industry	1076	238	321	517
Other	1348	468	418	462
<b>TOTAL</b>	<b>7497</b>	<b>2179</b>	<b>2482</b>	<b>2836</b>

It is interesting to note that while certification applications continued to increase by some 133 cases in the past three years, this increase does not compare to either unfair labour practice complaints (251 cases) or construction industry grievances (279 cases).

### 3. Objectives

To develop an effective management system, there is a need to define the objectives of the organization.

The Ontario Labour Relations Board has three basic goals.

- (a) The primary goal of the Board is to adjudicate all cases in a fair and creative manner and to provide effective remedies where appropriate.
- (b) The second goal of the Board is to settle or mediate as many cases as is reasonably possible.
- (c) Since justice delayed is justice denied, the final goal is to dispose of all cases as quickly and efficiently as possible.

### 4. Standards

The broad objectives outlined above must be refined into specific standards against which to measure performance.

The following is an outline of the procedures the Board has developed for case handling and the control system used to measure the effectiveness of these procedures. The control system focuses on three categories of cases: certifications; unfair labour practice complaints; and grievance arbitrations in the construction industry. These three categories represent the bulk of the Board's activity.

After studying a representative period and assessing how long an average case should take at each stage, control times were established.

In the three major categories of cases the control standards presently employed are as follows:

#### (i) Certification Cases

- (a) date of filing to date of processing — 1 day
- (b) date of processing to terminal date — 8 days
- (c) date of application to date of hearing — 21 to 25 days
- (d) date of hearing to date of decisions:
  - where only one day of hearing — 5 days
  - where more than one hearing day — 2 weeks

#### (ii) Unfair Labour Practice Complaints

- (a) and (b) — as in certification cases, above
- (c) date of application to date of hearing — 21 days

(d) date of hearing to date of decision:

- where only one day of hearing — 7 days
- where more than one day of hearing — 3 weeks

**(iii) Grievance Arbitrations in Construction Industry**

(a) and (b) — as in certification cases, above

(c) date of application to date of hearing — 14 days

(d) date of hearing to date of decision:

- where only one day of hearing — 7 days
- where more than one day of hearing — 3 weeks

Each case is monitored from the date the application is received at the Board to the date of its disposition against these control times. The monitoring tracks the time lapse between each stage of processing (i.e. date of application for certification to completion of administrative processing; date of administrative processing to terminal date; terminal date to hearing date; hearing date to decision and disposition) and reports all cases that have exceeded the control times.

## **5. Management Information System**

Two case monitoring clerks compile all the information in weekly and monthly reports. The reports generated by the monitors constitute the basis of the Board's case management information system. All cases which have exceeded the control times are reported and aggregate case disposition results on a monthly and year-to-date basis are tabulated and compared against the results of the previous year.

For example, a weekly report is prepared indicating all cases that have exceeded control dates at any stage. Reasons for the delays are then supplied by:

- (i) the Registrar — in cases of administrative processing;
- (ii) the Senior Labour Relations Officer — in cases where Labour Relations Officers are causing delays, and
- (iii) Vice-Chairmen — where decisions are delayed.

This report is forwarded to the Chairman each week for appropriate action.

A weekly report indicating the number of incoming and disposed of cases by case type (e.g. certifications, terminations, votes, illegal strikes, etc.) and a breakdown by number of those disposed of cases that have exceeded control times is also forwarded to the Chairman. This report also indicates what percentage of the cases disposed of to date have met the control



times for comparison with the previous year's results and the Board's current performance commitment.

A detailed monthly report is prepared outlining the caseload and settlement activity effectiveness of all the field staff.

Upon receipt of these reports, the reasons for delay or decrease in overall Board performance are evaluated to determine if these reasons involve factors beyond the Board's control, i.e. increasing volume or complexity. An important example of a delay factor currently outside the Board's control and of concern to it is the adjournment of cases by agreement of the parties. The Ontario Labour Relations Board has a policy where, if all parties to a matter are in agreement, they may request a hearing adjournment either to a fixed date or to a date in the future to be set by the Registrar. In some cases, adjournments on agreement can exceed 3 months and severely impact case processing performance statistics. The Board is currently studying a statistical analysis that will "break out" this type of delay and report it separately.

Management information is of little value if it is not analyzed and acted upon. To this end, the Chairman works with an Administrative Committee which meets monthly to discuss all aspects of Board work including: areas where case processing improvement is needed; the settlement activity of Labour Relations Officers, and the general disposition rate of all cases.

## **6. Other Uses for the Information System**

Published results developed through an effective management information system can be used in many ways:

### **(a) M.B.R. and Related Budget and Resource Allocation Activity**

#### **(i) M.B.R.**

Statistics developed as a result of the case monitoring system can be used to set the Board's standards for the "Management by Results" reports that are prepared annually by each branch and ministry for the provincial government's Management Board.

The government's aim is to have an effective results-oriented management system that can be applied across the management spectrum within each ministry.

The productivity measures that the Board includes in its MBR report are divided into 4 headings and the Board's objectives for 1981-82 are:

#### **1. Percent of cases disposed of within:**

Certifications	— 4 weeks	63.0%
Unfair Labour Practice Complaints	— 6 weeks	60.0%

Construction Industry Grievances	— 4 weeks	63.0%
2. Percent of L.R.O. settlements		80.0%
3. Number of decisions per Vice-Chairman		149
4. Number of settlements per Labour Relations Officer		81

## **(ii) Budget & Resource Allocation**

In order to realistically assess the coming year's financial needs, there must be some ongoing process to measure caseload and case disposition increases or decreases. A successful case monitoring and management system is the primary method for justifying needed resources in both manpower and physical plant.

An example of the process in action would be the assessment required to request an additional Vice-Chairman. This would involve documenting the year-by-year increase in caseload, any significant increases in hearing hours; the number of decisions per vice-chairman per month and the month-to-month backlog of decisions to be written. Without substantial data, as illustrated above, to back up the request, and particularly in a period of fiscal restraint, it is unlikely that any consideration would be given such a request.

In addition, since monitoring reports are kept on a monthly basis it is possible to project well in advance financial problem areas and adjust budget expenditures to meet new needs.

## **(b) Program Development**

As a management system is developed and case monitoring reports analyzed, those areas that need program assistance or enhancement are more easily identified. This assistance may be in the form of new or altered processing methods, staff development or staff reorganizing. In the last two years as a result of Administrative Committee action the O.L.R.B. has reorganized its clerical staff, reorganized its field staff, instituted a waiver of hearing program, substantially modified its settlement approach to certification day, and substantially increased staff development activity.

## **(c) Employee Motivation**

Administratively, a well-managed information system can help each area in the Board improve its internal procedures within measurable guidelines and increase its overall awareness of the

importance of processing each case quickly and correctly. It can increase staff sensitivity to the importance of the Board and improve individual staff morale.

A good management information system also allows senior management to evaluate both the quantitative and qualitative output of not only the clerical staff but also the adjudicative and field staff and in this way have a basis for improving production as well as performance.

## **7. Other Data**

To help analyze the resource implications of Board adjudicative and field programs the Board is compiling the following statistics:

### **The Workload of Vice-Chairmen and Labour Relations Officers**

(a) In terms of volume, by measuring:

Number of assignments by case type.

Number of decisions/settlements by case type.

Number of cases pending by case type.

Number of pages per decision/examination.

Number of hearing days/examination days.

(b) In terms of time lapse, by measuring:

— time from last hearing to decision

— time between examination meetings

— time from date of officer appointment to report date.

These statistics could be compiled on both a monthly and a year-to-date basis.

## **Conclusions**

Because time delay and backlog in case disposition directly affects the Board's mandate to maintain and encourage harmonious labour relations, every effort must be made to develop and perfect a case management information system that will provide up-to-date information and continuous evaluation to be used as a basis for the improvement of the Board's practices and procedures.



By developing clear objectives and applying reasonable methods of controlling and measuring performance, the Board will be better able to forecast productivity results and reduce time delays and backlog.

Effective management control will, by its very nature, make the Board a more efficient and expeditious organization.







*Ontario Labour Relations Board,  
400 University Avenue,  
Toronto, Ontario*

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Labour Relations  
Board

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# Annual Report 1981-82

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<i>Registrar and Chief</i>	
<i>Administrative Officer</i>	D.K. AYSLEY
<i>Solicitor; Editor</i>	HARRY FREEDMAN

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# ONTARIO LABOUR RELATIONS BOARD

## ANNUAL REPORT 1981-82







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Ontario  
Labour Relations  
Board

Office  
of the  
Chairman

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The Honourable Russell H. Ramsay  
Minister of Labour  
400 University Avenue  
Toronto, Ontario  
M7A 1T7

Dear Mr. Ramsay:

It is my pleasure to provide to you the second Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1981 to March 31, 1982.

Respectfully submitted,

A handwritten signature in cursive script, reading "George W. Adams".

George W. Adams, Q.C.  
Chairman

GWA/gm

## MESSAGE FROM THE CHAIRMAN

Fiscal Year 1981-82 saw improvements in case processing in all areas over the previous year. These results occurred in the face of financial and manpower constraints. The future of case administration will continue to centre on the problem of “doing more with less” and will require the Board to review its administrative procedures continually. The computerization of our case monitoring system should help the Board identify where further internal economies can be achieved.

The Board itself will continue to emphasize the settlement side of its program to avoid costly delays. Illustrative of this emphasis is the re-organization in field services during the fiscal year to create the position of Manager Field Services, and three senior labour relations officers responsible for administering the new team approach to the labour relations officer function. More parties are taking advantage of the waiver of hearing program for certification cases and settlement activity on weekly certification days continues at a high level. The Board’s recently instituted expedited hearing for cease and desist applications and pre-hearing discovery procedure for jurisdictional disputes will also assist in the efficient processing of contentious matters.

The case highlights reveal a number of very significant decisions in the areas of certification, remedies and fair representation. The new highlight section on the construction industry reflects the growing importance of labour board decisions in that industry.

Two new pamphlets describing procedures, rights and obligations under the Act constitute an important initiative by the Board to make collective bargaining laws more accessible and understandable to the public. These publications along with the Guide to the *Labour Relations Act* which the Board produces are available at all Ministry of Labour Branch Offices as well as from the Board itself.

Staff development activity continues in full swing as does the field officer exchange program with labour and management. The Board was also pleased with the results of an important seminar on labour board practice it co-sponsored in October of 1981 with the Personnel Association of Toronto.

On behalf of the Board I thank all members of the staff for their efforts over the past year and the labour relations community for its co-operation.

George W. Adams, Q.C.  
Chairman





## I INTRODUCTION

Last year, for the first time in its history, the Ontario Labour Relations Board published its own Annual Report. The Report was well received by the labour relations community. The numerous positive responses the Board has received from labour and management, academics, labour law administrators and the practicing bar confirms the need for this publication. This is the second year of its publication and covers the fiscal year April 1, 1981 to March 31, 1982.

This year's Report contains up to date information on the organizational structure of the Board, its personnel and administrative developments of interest to the public. It provides a statistical summary and analysis of the work-load carried by the Board during the year, and includes statistical charts on several aspects of the Board's function. It also reviews the staff development program initiatives undertaken by the Board in the past year.

The Report contains high-lights of some of the important decisions issued by the Board during the year, and also provides a summary of all of the Court activity in which the Board was involved during the year under review. The Report will continue to provide a legislative history of the *Labour Relations Act* and note any amendments made to the Act during the year as a regular feature.

This volume of the Report also includes a paper entitled "Grievance Mediation by the Ontario Labour Relations Board" which was presented by the Chairman of the Board at the S.P.I.D.R. Conference in Toronto in October, 1981.



## II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of public hearings before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

"... the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board, (1978), 1 Advocate's Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today — management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers — something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when the dispute arises in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944. In his book, *The Ontario Labour Court 1943-44*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise:-

"... the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a wartime move by the Federal Government to centralize labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over “property and civil rights.” (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5)

The Act was subsequently narrowed so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, “opt in” to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations “in the same form and to the same effect as that . . . Act which may be passed by the Parliament of Canada at the session currently in progress. . . .” This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board’s role was fairly limited. There was no enforcement mechanism at the Board’s disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lockout unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary to the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board’s power was quite limited. The power to make certain declarations, determinations, or to grant consent to



prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

*The Labour Relations Amendment Act, 1960*, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario*, May, 1976). (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31.) Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, the Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation." This duty, imposed on trade unions, required them not to act in a manner which was arbitrary,



discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make “cease and desist” orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and enforceable as orders of the Court.

A major increase in the Board’s remedial powers under the *Labour Relations Act* occurred in 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board’s remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make “cease and desist” orders with respect to any unlawful strike or lock-out. It was in 1975 as well, that the Board’s jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, *The Labour Relations Amendment Act, 1980 (No. 2)*, S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer’s final offer at the request of their employer.

There were no amendments to the *Labour Relations Act* during the year under review.

## THE FULL TIME BOARD AND SENIOR STAFF



*Front Row: (left to right)*

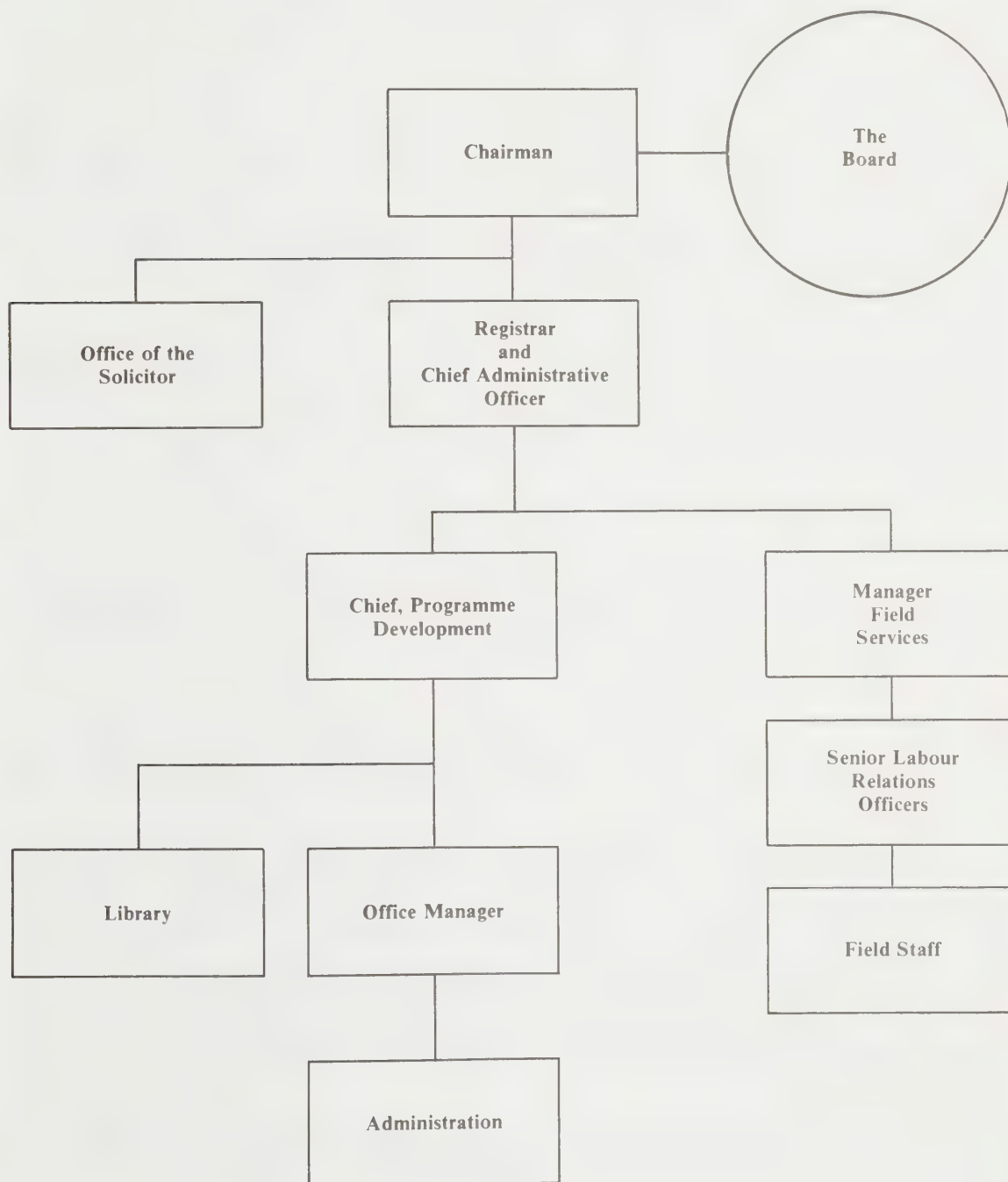
N. Satterfield, H. Ade, O. Hodges, G. W. Adams (Chairman), K. Burkett, J. Bell, W. Wightman

*Second Row:*

H. Freedman, M. Mitchnick, B. Armstrong, J. Wilson, C. Ballentine, E. Meslin, D. K. Aynsley, H. Kobryn, P. Picher, R. Egan, S. Cooke.

### III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:



## IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act* as follows:

“...it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chairman and an Alternate Chairman, several Vice-Chairmen and a number of Members representative of labour and management respectively in equal numbers. These appointments are made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the *Labour Relations Act*, R.S.O. 1980, c. 228, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not appealable and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report from time to time.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 464. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Office of the Solicitor.



## **(a) ADMINISTRATIVE DIVISION**

The Registrar and Chief Administrative Officer is the senior administrative official of the Board. He is responsible for supervising the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings, the holding of votes or particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, constraints on its access to public funds, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload, within the resource parameters set for it, underpins much of its contribution to labour relations harmony in this province.

The Chief, Programme Development and the Manager Field Services report directly to the Registrar and Chief Administrative Officer. The former manages the day-to-day administrative operation and the latter the field services. An Administrative Committee comprised of the Chairman, Alternate Chairman, Registrar and Chief Administrative Officer, Chief, Programme Development, Manager Field Services, Senior Solicitor and Office Manager meets monthly to discuss all aspects of Board administration and management.

The administrative division of the Board includes: office management, case monitoring, and library services.

### **1. Office Management**

An administrative support staff of approximately 60 people, headed by an Office Manager who reports to the Chief, Programme Development, and a Senior Clerical Supervisor processes all the applications received by the Board.

Four primary sections deal with applications:

- (1) The certification section handles all applications for certification, termination and accreditation.
- (2) The sundry section processes all other applications including unfair labour practice complaints, grievances in the construction industry and illegal strike and lock-out proceedings.
- (3) The vote section deals with all representation votes.
- (4) The clerks section reviews evidence in support of, or opposition to, trade unions filed with the Board in certification and termination applications and prepares the material necessary for the Board to conduct hearings and when necessary, attends hearings to assist the Board.

The bulk of the Board's caseload is made up of applications for certification, unfair labour practice complaints and referrals to arbitration of construction industry grievances.

The Registrar's office is responsible for setting hearing dates for all cases and maintaining an up-to-date availability roster of all Vice-Chairmen and Board Members for scheduling purposes.

## **2. Case Monitoring**

Because delay in case handling directly affects the Board's objective of disposing of all cases as quickly and efficiently as possible, a case monitoring and control system was developed. Control times have been established at each stage of processing for different types of cases and all cases filed with the Board are monitored against these standard times.

Over the past two years the case monitoring system has developed into an exceptionally useful case management tool. One of the major drawbacks, however, has been the fact that all the information is tabulated manually resulting in reporting delays. Accordingly, over the past year the Board and the Ministry's Systems Branch have been developing a computerized system to process case monitoring information. All the data on each case will be coded daily by case monitors and the computer will provide weekly and monthly reports of the process, case by case, and statistical data in a range of areas including disposition, time lapse of delays in processing and caseload by case type.

The computer system should be on-line and producing reports for the Board by September, 1982.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide vital statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can be lead to increased productivity and better service to the community.

### 3. Library Services

The Ontario Labour Relations Board Library employs a full-time professional librarian and a library technician to manage a collection of approximately 750 texts, 100 journals and 25 case reports in areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The Library has approximately 3,000 volumes. The collection includes decisions from other jurisdictions, including the Canada Labour Relations Board, the U.S. National Labour Relations Board and provincial labour boards from across Canada.

The library staff provides research services for Board staff and assists the library users.

A card index to the Board's Monthly Report of decisions provides easy access to reported decisions by case name, subject, and by cases considered. The Board Library is presently converting the card index to a computer system which would provide on-line access as well as an index on microfiche.





## **(b) FIELD SERVICES**

The Board holds to the view that the interests of the parties and labour relations generally in this province are best served by settlement in the majority of cases. In furtherance of its goal to resolve as many of the matters brought before it as possible without the need for a formal hearing, the Board reorganized its field services division in fiscal 1981-82. The Board had previously employed 17 labour relations officers under the direction of a senior labour relations officer. In response to a case load increasing in both volume and complexity, a new position of Manager Field Services was created and three of the Board's more experienced officers, who had previously served as informal group leaders, were promoted to the position of Senior Labour Relations Officer. Mr. J.A. "Jack" MacDonald was appointed to the position of Manager Field Services effective December 1, 1981. Mr. MacDonald has extensive experience in labour relations and had served as the Board's Senior Labour Relations Officer since December 13, 1976. In the position of Manager Field Services, Mr. MacDonald will be responsible for the overall functioning of the division with particular emphasis upon the setting and monitoring of performance standards, case assignments, staff development and inter-Board liaison. The Senior Labour Relations Officers, who have each been assigned a team of officers, will be responsible for providing guidance and advice in the handling of individual cases, managing the Board's certification day settlement efforts on rotating weeks and assisting with the performance appraisals of the Board's labour relations officers. In addition, the Senior Labour Relations Officers will carry an active case load in the field. Mr. S. Netherton, Mr. L. Stickland and Mr. N. Wilson, have been appointed to position of Senior Labour Relations Officer.

The field staff continued its excellent performance in fiscal 1981-82. With the field staff settlement rate running at about 85 per cent on all matters, the impact of the overall administration of the Board is self-evident. A 10 per cent decrease in the effectiveness of the Board's field staff would result in an increase in the Board's hearing load of approximately 50 per cent with an attendant straining of resources and delay in the disposition of cases. The Board's field staff provided the underpinning to the Board's overall excellent performance in fiscal year 1981 - 82.

The Alternate Chairman supervises field activity, and along with the Manager, and Senior Solicitor meets with all officers on a monthly basis to review recent developments and program performance.

## **(c) OFFICE OF THE SOLICITOR**

The Office of the Solicitor, under the direction of the Senior Solicitor of the Board, reports directly to the Chairman. A solicitor assists the Senior Solicitor in carrying out the functions of this office. In addition, each year the Board employs several articling law students to assist in the solicitors' work.

The Office of the Solicitor is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chairman, Vice-Chairman and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Office of the Solicitor is responsible



for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the Office of the Solicitor. When preparation or revision of practice notes, Board Rules or forms become necessary, the Office of the Solicitor is responsible for undertaking those tasks.

The Senior Solicitor is active in the staff development programme of the Board and the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, the solicitors prepare written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The Senior Solicitor also advises the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Office of the Solicitor is the representation of the Board's interest in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, the Senior Solicitor in consultation with the Chairman, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Office of the Solicitor is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

Ten applications for judicial review of the Board's decisions were dealt with by the Courts during the current fiscal year. Of those ten, eight applications were dismissed, one decision of the Board was quashed, and one decision was remitted back to the Board for re-hearing on consent of the parties and the Board. In one case, the Court, on its own motion, stayed proceedings consequent upon the Board's decision pending the determination of the application before the Divisional Court.

The Board was also involved in four applications seeking a stay of Board decisions and one application by way of originating notice of motion to construe a provision of a statute. All five applications were dismissed. In addition, the Board sought and obtained leave to intervene in an appeal to the Ontario Court of Appeal seeking to set aside the decision of a Weekly Court judge finding that the Court had no jurisdiction to enforce a Board order. The appeal was allowed, and a further application for leave to appeal to the Supreme Court of Canada was refused.

At the end of the fiscal year, appeals from the order granting the stay and the order quashing a Board decision were pending.

The Office of the Solicitor maintains an information service through which any person may obtain, by telephone, general information relating to the *Labour Relations Act*, the Regulations, procedures and practices of the Board, and other related legislation. It is also possible for a member of the public to obtain such information at a personal interview with a member of the Board's legal staff. The solicitors also receive and respond to written inquiries coming from the public. During the fiscal year, two pamphlets entitled "Certification by the Ontario Labour Relations Board" and "Rights of Employees, Employers and Trade Unions"

were published for public distribution. The Board is also actively considering production of an educational film and publication of additional pamphlets.

The Office of the Solicitor is also authorized to respond on behalf of the Board to inquiries or complaints brought to the Board's attention by the Ombudsman of Ontario. During the year under review, eight formal complaints relating to the Board were disposed of by the Ombudsman, seven of which were withdrawn or found to be unsupported. In one case, the Board had indicated to the Ombudsman that the complainant was free to bring a fresh complaint before the Board or apply for reconsideration. The Ombudsman therefore made no further comment on that portion of the complaint and found the balance of matters raised by that complaint unsupported.

The Office of the Solicitor is responsible for the publication of the Ontario Labour Relations Board Monthly Report, a monthly series of selected Board decisions which commenced in 1944. The Senior Solicitor is Editor of this publication. That office also produces a publication titled "A Guide to the Ontario Labour Relations Act", which is an explanation in laymen's terms, of the major provisions of the Act. During the fiscal year the Guide was revised to reflect current Board policy and legislative amendments. The Office of the Solicitor is also responsible for the publication of the Board's Annual Report.



## BOARD PERSONNEL

In the year under review, the Board consisted of the following persons:

GEORGE W. ADAMS, Q.C.                      *Chairman*

Appointed Chairman of the Ontario Labour Relations Board effective September 1, 1979, Mr. Adams holds degrees of B.A. (McM) 1967, LL.B. (Osgoode, with honours) 1970, and LL.M. (Harvard 1971). His professional background includes: law professor at Osgoode Hall Law School, 1971-78; Vice-Chairman Ontario Labour Relations Board, 1974-75; Assistant Deputy Minister of Labour, Province of Ontario, 1975-77; Vice-Chairman, Ontario Education Relations Commission, 1977-79; Chairman, Ontario Grievance Settlement Board 1977-79; and private practitioner with a Toronto law firm, 1978-79. Mr. Adams is the author of numerous books, monographs and articles, the majority of them relating to labour law. He is an experienced arbitrator, mediator and fact-finder. He is a member of the National Academy of Arbitrators and the Law Society of Upper Canada. In January of 1982, Mr. Adams was appointed Queen's Counsel. In the year under review, Mr. Adams had published or presented the following papers:



"The Ontario Experience with Interest Arbitration: Problems in Detecting Policy": Interest Arbitration: Measuring Justice in Employment, Joseph M. Weiler, ed. (Carswell Company Ltd.); "Structural Issue of Centralized Bargaining in Health Services: Canada, U.S.A. and U.K.": *Industrial Relations and Health Services*, A. S. Sethi and S. J. Demmock ed. (Croom Helm); *Industrial Democracy: A Canadian Perspective*, Canadian Institute of Advanced Legal Studies, Cambridge, England, July 31, 1981; *Labour Law Remedies* (to be published in a forthcoming book of essays by Butterworths edited by Professors Swan and Swinton); *The Board's Evolving Philosophy*, P.A.T. Seminar, O.L.R.B.: The Growing Presence, October 15, 1981; *Grievance Mediation by the Ontario Labour Relations Board. One Way to Fight Arbitration Costs in the Eighties*, S.P.I.D.R. Conference, October 20, 1981 (See Appendix); *Effective Collective Bargaining in the Education Sector — Back to Basics*, Conference for Trustees, Teachers and School Administrators, Collective Bargaining in Education — Focus on the Fundamentals, November 26, 1981; *The Arbitration of Discharge Cases in the 80's*, C.L.V. Conference on "Current Arbitration Issues, March 15, 1981.

KEVIN M. BURKETT

*Alternate Chairman*

Mr. Burkett has served as the Board's Alternate Chairman since September of 1979. He was first appointed as a Vice-Chairman of the Board in November of 1975. Mr. Burkett, who holds B.A. and M.B.A. degrees from the University of Toronto, has had much varied experience in industry, trade unions and government prior to joining the Board. Having served as the Research Director/Negotiator of the Civil Service Association of Ontario (predecessor to the Ontario Public Service Employees Union), from 1968 to 1970, he joined the Ontario Ministry of Labour in 1970 as a conciliation officer and was appointed as a mediator in 1972. In 1973 he joined Ontario Hydro as Senior Industrial Labour Relations Officer, a post he held until his appointment to the Board. Mr. Burkett is an experienced arbitrator, mediator and fact-finder, both in the private and public sectors. Mr. Burkett served as the Chairman of the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mining Plants in Ontario, whose report was submitted to the respective Minister of Labour in May 1981.

GAIL G. BRENT

*Vice-Chairman*

A part-time Vice-Chairman since 1977, Mrs. Brent graduated in 1965 with a B.A. from the University of Toronto and with an LL.B. from Queen's University in 1968; she was called to the Bar in 1975. Mrs. Brent taught law at Queen's University from 1970 to 1974, and at the University of Western Ontario from 1974 to 1977. She was appointed to the permanent list of approved arbitrators of the Labour-Management Arbitration Commission in 1974, and since 1977 has been an active arbitrator and adjudicator. She has been an arbitrator with the Ontario Police Arbitration Commission since 1974. In 1980 Mrs. Brent was appointed as a Commissioner of both the Education Relations Commission and the College Relations Commission.

E. NORRIS DAVIS

*Vice-Chairman*

Mr. Davis, who holds the degree of LL.B. (Sask.) 1938, was first appointed to the Board as an employer representative in 1948. From 1952 to 1953 he served as the Chairman of the Board. In 1953 Mr. Davis left the Board and during the next 15 years held several positions in corporate personnel and industrial relations, including a number of years as President of Carling O'Keefe Breweries of Canada Limited. Mr. Davis returned to the Board as a part-time Vice-Chairman in 1977.



**RORY F. EGAN***Vice-Chairman*

Mr. Egan completed his undergraduate work at St. Michael's College, University of Toronto in 1938. After the intervening world war, Mr. Egan earned a law degree from the same university in 1945. Called to the Bar in the same year, he engaged in the practice of law, and served for one year as Assistant Crown Attorney in St. Thomas, Ontario. In 1954 he joined A.V. Roe as Legal Assistant to the Vice-President of Industrial Relations. Mr. Egan returned to private practice with a law firm specializing in labour relations law in 1959. In 1963 he left his law practice to devote his time to chairing boards of conciliation and arbitration. Mr. Egan was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1966 and in 1974 was designated Alternate Chairman. He was appointed Chairman of the Ontario Police Arbitration Commission in 1976. Mr. Egan retired from the Board in 1979, but has continued to serve as a part-time Vice-Chairman.

**DON E. FRANKS***Vice-Chairman*

Mr. Franks is a graduate of McMaster University (B.A. 1960) and Osgoode Hall Law School (LL.B. 1967). Joining the Board in 1969, he served as its Solicitor. In 1972 Mr. Franks was appointed a Vice-Chairman of the Board. He occupied this position until 1975 when he was appointed Vice-Chairman of the Construction Industry Review Panel, which position he held until May, 1980. Mr. Franks also served, during 1975-76, as the Commissioner on the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario. The report prepared by him led to the amendment of *The Labour Relations Act* in 1977 which provided for province-wide bargaining in the construction industry. Mr. Franks was also involved in the implementation and monitoring of the province-wide bargaining scheme. In 1978 he was appointed chairman of a conciliation board by the government of Saskatchewan, which resolved a two-month province-wide strike by the Labourers' Union. Mr. Franks returned to the Labour Relations Board as a Vice-Chairman in May of 1980.

**RON A. FURNESS***Vice-Chairman*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his L.L.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chairman in 1969.

**ROBERT D. HOWE***Vice-Chairman*

Mr. Howe was appointed to the Board as a part-time Vice-Chairman in February, 1980 and became a full-time Vice-Chairman effective June 1, 1981. He graduated with an LL.B. (gold-medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 until his appointment to the Board, he practised law as an associated of a Windsor law firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator.

RICHARD O. MacDOWELL      *Vice-Chairman*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), a M.Sc. (with Distinction) in Economics from the London School of Economics & Political Science (1970) and a LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chairman in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit.

MORT G. MITCHNICK      *Vice-Chairman*

Mr. Mitchnick was appointed as Vice-Chairman of the Board in November, 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his LL.B. at the University of Toronto Law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board.

MICHEL G. PICHER      *Vice-Chairman*

Mr. Picher holds the degrees of A.B. (Colby College, Maine 1967), LL.B. (Queen's University, 1972) and LL.M. (Harvard, 1974). He was appointed a Vice-Chairman of the Board in 1976. Prior to his appointment, Mr. Picher taught law as Assistant Professor in the Faculty of Law at the University of Ottawa from 1974 to 1976. He is an experienced arbitrator, mediator and fact-finder.

PAMELA C. PICHER      *Vice-Chairman*

Mrs. Picher was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1976. She is a graduate of Colby College, Maine (A.B., 1967) and Queen's University (LL.B., 1973). She is presently working towards an LL.M. degree from Harvard University, the required thesis having been completed. Prior to joining the Board, Mrs. Picher was an Assistant Professor at the University of Ottawa Law School. In 1975 she was commissioned by the Law Reform Commission of Canada to write a paper for the Administrative Law Section, which she presented in July, 1976. Mrs. Picher has several other legal publications to her credit and is an experienced arbitrator and fact-finder. In June of 1981, Mrs. Picher moved from full-time to part-time status.

NORMAN B. SATTERFIELD      *Vice-Chairman*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chairman. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He has been involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years. Mr. Satterfield is a past Director of the Construction Labour Relations Association of Ontario and a past Member of the National Labour Relations Committee of the Canadian Manufacturers' Association.

IAN C.A. SPRINGATE      *Vice-Chairman*

Mr. Springate has been a Vice-Chairman of the Board since May of 1976. He has degrees of B.A. with distinction, (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chairman. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator.

**Members Representative of Labour and Management**

HOWARD J.F. ADE

Mr. Ade was appointed as a management representative Board Member in January, 1972. Having retired from the Royal Canadian Mounted Police in 1957, Mr. Ade joined Standard Industries Limited as its Director of Labour Relations. He has served as Chairman of the Labour Relations Committee of the Canadian Construction Association and the Labour Bureau of the Ontario Federation of Construction Associations. He has also been a member of negotiating committees and labour relations committees in various sections of the construction industry. Mr. Ade has served as labour relations advisor and consultant to several employers and employer associations in the construction industry.

DAVID B. ARCHER

One of the most senior persons on the Board, Mr. Archer was appointed as a part-time Board Member representing labour in 1948. He is a past president of the Textile Workers' Union (Local 1) and also of the Toronto and Lakeshore Labour Council. Mr. Archer was a vice-president of the Canadian Labour Congress and for several years held the position of President of the Ontario Federation of Labour. The other numerous offices Mr. Archer has held include Executive Member of the Ontario Economic Council, and Member of the Prime Minister's Advisory Committee on Economic Policy.

BROMLEY L. ARMSTRONG

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in March of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board.

CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various



offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

#### JOHN D. BELL

Mr. Bell has been a full-time Member of the Board representing management since 1970. He was employed for 33 years of Massey-Ferguson Limited in various personnel and industrial relations capacities prior to his appointment to the Board. The last position he held at the Company was Director of Personnel and Industrial Relations, Industrial and Construction Machinery Division.

#### C. GORDON BOURNE

Mr. Bourne has been a part-time Member of the Board representing management since April of 1977. Between 1945 and 1977, he was employed by Molson's Brewery (in Quebec and in Ontario) in various personnel and industrial relations capacities. Among the offices Mr. Bourne held prior to his appointment to the Board include: Director of the Montreal Personnel Association (1952-54); Director (1962-67) and President (1966-67) of the Personnel Association of Toronto; Member of the Canadian Manufacturers' Association Ontario Labour Relations Committee (1963-77); and Member of the Ontario Brewers' Industrial Relations Committee (1955-77).

#### E. JIM BRADY

Mr. Brady was appointed a part-time Member of the Board representing management in November, 1979. He was employed in various capacities in personnel and industrial relations for 34 years prior to his appointment. He spent the majority of this time at Kimberley-Clark of Canada Limited, where he became Director of Industrial Relations in 1972. In 1975, Mr. Brady was appointed Vice-President of Industrial Relations of the Abitibi-Price Inc. Group.

#### F. STEWART COOKE

In October, 1981, Mr. Cooke was appointed as a full-time Board Member representing labour. Having served in the Army in the early 1940's, Mr. Cooke studied Economics and Law at Victoria College for two years. Mr. Cooke's career with the United Steelworkers of America commenced in 1948 when he joined its staff. In 1949, he was elected secretary of the Hamilton Labour Council of the Canadian Congress of Labour. In 1953, Mr. Cooke was appointed Supervisor for the Hamilton area, a position he held until March, 1971. In 1956, he was elected Secretary of the merged Hamilton and District Labour Council of the Canadian Labour Congress. In 1962 Mr. Cooke was elected Vice-President of the Hamilton and District Labour Council. In March of 1971 Mr. Cooke was appointed District Representative of the Steelworkers District 6. Subsequently, Mr. Cooke held several key positions with the Steelworkers, including International Representative, before being elected Director of District 6 in 1977, a position he held until September, 1981. From 1972 to 1977 he was a Vice-



President of the Ontario Federation of Labour. Mr. Cooke has served on the executive boards of numerous public, social and charitable organizations and has held several positions on the executive of the New Democratic Party of Canada including the position of Vice-President, from 1976 - 1980. He has represented the Canadian Labour movement at many conferences, including the Iron and Steel Committee of the International Labour Organization, in Switzerland, 1969, and the International Metalworkers Federation Iron and Steel Conference in Belgium, 1969. Mr. Cooke has also been on delegations to the U.S.S.R., Japan, Sweden, Norway, Finland, France, and Holland.

#### W. GORDON DONNELLY

Mr. Donnelly was appointed a part-time Board Member representing management in 1979. Having obtained a B.A. (1939) and B.C.L. (1947) from McGill University of Montreal, he practised law in the Province of Quebec. In 1947 he joined the Aluminum Company of Canada Limited, where he progressed from Industrial Relations Supervisor, Shawinigan Works, to Vice-President Personnel and Industrial Relations, Alcan Products Limited, Toronto, Ontario in 1970.

#### MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. A graduate of the University of British Columbia. Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he has held include: Director of Labour Relations of the Ontario Federation of Construction Associations, 1970; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel, 1972; Director of Industrial Relations, Kaiser Canada, 1974; Manager of Industrial Relations of the SNC Group, 1975; and Executive Director of the Construction Employers Co-ordinating Council of Ontario, 1979. Mr. Eayrs is also a past Chairman of the National Labour Relations Committee of the Canadian Construction Association.

#### MICHAEL J. FENWICK

Mr. Fenwick was appointed a part-time Board Member representing labour in October, 1976. Since 1940 he has been involved in organizing, negotiating and appearing before arbitration and conciliation boards and has participated in many other facets of union activity. Employed by the Steelworkers Organizing Committee (CIO), which was later renamed the United Steelworkers of America, between 1940 and 1954 Mr. Fenwick administered the business affairs of the Union's locals in Oshawa, Whitby, Ajax, Bowmanville and Port Hope. In 1954, he was promoted to Assistant to the Director of District 6 and he served in that capacity until his appointment to the Board.

#### WILLIAM H. GIBSON

Mr. Gibson was appointed a part-time Board Member representing management in 1978. He has been employed by Robert McAlpine Limited since 1954 and is Vice-President of that company with a portfolio that includes the responsibility for labour relations for the Company's operations throughout Canada. Mr. Gibson has been very active in the field of labour relations involving contractors and has held several key positions in various construction contractors' associations.

## ANNE S. GRIBBEN

Ms. Gribben, a registered nurse by profession, obtained a B.A. from the University of Toronto in 1968, in addition to her nursing qualifications. Her nursing career at the Toronto Western Hospital included 13 years served in a supervisory capacity. She has served on various committees of both the Canadian Nurses' Association and the Registered Nurses' Association since 1950. An Executive Officer of the former District No. 5, Registered Nurses' Association of Ontario from 1960, during 1964-65 she was involved in its re-organization into the present-day Metro Toronto Chapter. Ms. Gribben joined the Employment Relations Department of the Registered Nurses' Association of Ontario in 1965, and became its Director in 1968. Ms. Gribben relinquished that post in 1974 to become the Chief Executive Officer of the Ontario Nurses' Association. She was appointed a part-time Board Member representing labour in 1975 — the first woman to be appointed as a Board Member of the Ontario Labour Relations Board.

## LLOYD HEMSWORTH

Mr. Hemsworth has served as a part-time Member of the Board representing management since August of 1975. Having obtained a B.A. degree (1939) from the University of Western Ontario, he returned to complete a management training course at that university in 1954. Mr. Hemsworth is also a part-time Member of the Public Service Staff Relations Board. Prior to his appointment to the Ontario Labour Relations Board, Mr. Hemsworth held several key positions in the personnel and industrial relations departments at Canadian Industries Limited, Kimberley-Clark of Canada and de Havilland Aircraft. Mr. Hemsworth has presented lectures and papers at numerous universities and seminars.

## ALBERT HERSHKOVITZ

Mr. Hershkovitz has served as a part-time Board Member representing labour since 1976. He has been the Business Agent of the Fur, Leather, Shoe and Allied Workers' Union, Locals 82 and 62, since 1956, and a Vice-President of the Ontario Federation of Labour since 1974. In 1977 he became the President of the Ontario Provincial Council, United Food & Commercial Workers' International Union. In addition to holding these offices, Mr. Hershkovitz has been a Member of the Board of Referees of the Unemployment Insurance Commission since 1960 and for many years has acted as a union nominee on boards of arbitration.

## OLIVER HODGES

Mr. Hodges has been a full-time Board Member representing labour since 1967. In 1943, he became the Representative and Director of Education, National Union of Shoe and Leather Workers, CCL. Between 1948 and 1950 he was a Representative of the CCF Labour Committee. In 1950 he became the Hamilton area representative to the Canadian Congress of Labour and he held this office until 1954, when he became the Canadian Director of the United Glass and Ceramic Workers of North America, CLC, AFL-CIO. Between 1965 and 1967 Mr. Hodges served on numerous conciliation and arbitration boards as union nominee. During the period 1943 to 1965, he was a candidate for the CCF and NDP in municipal, provincial and federal elections.

## ROBERT D. JOYCE

Mr. Joyce has been a part-time Member of the Board representing management since September, 1977. He joined Canada Packers Limited in 1947 and became its Corporate Relations Manager in 1965. He was also elected to the Company's Board of Directors that year. During his career at Canada Packers, Mr. Joyce was actively involved in negotiation, conciliation and arbitration proceedings and also served on many boards of arbitration as employer nominee. Mr. Joyce has been called upon to serve on commissions and task forces appointed by governments on several occasions. As a member of the Canadian Manufacturers Association Industrial Relations Committee, Mr. Joyce has conducted many industrial relations seminars. He has also provided an employee relations consultation service for management for several years.

## HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario, 1958-62; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and Member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

## BRUCE K. LEE

Mr. Lee has served as a part-time Board Member representing labour for the past three years. He was President of the UAW Amalgamated Local 252, Toronto, for 19 years. During that time, he served on various Union committees and delegations, both in Canada and the United States. In 1964, Mr. Lee was appointed to the UAW organizing staff.

## STEPHEN H. LEWIS

Mr. Lewis was appointed as a part-time Board Member representing labour in 1979. Educated in the University of Toronto and the University of British Columbia, Mr. Lewis taught in Africa before entering politics in 1963. He was a Member of the Ontario Legislature from 1963 to 1977. During this time, he held the positions of Leader of the New Democratic Party of Ontario and Leader of the Official Opposition in the legislature. Since his retirement from active politics, Mr. Lewis has been engaged in a career as a columnist, broadcaster and lecturer. He has also been active in the trade union movement and is experienced in the arbitration process and other facets of collective bargaining. On several occasions he has been appointed to Disputes Advisory Committees under *The Labour Relations Act* as a representative of labour.

## JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics and well as



an M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies before becoming Vice-President of International Labatt Brewing Co. in 1979. He held this position until his retirement in January of 1982.

#### F. WILLIAM MURRAY

Mr. Murray was a part-time Member of the Board representing management from 1965 to February of 1980, when he assumed a full-time position on the Board. From 1948 to 1963, Mr. Murray was employed as the Manager of the Motor Transport Industrial Relations Bureau, which served as the labour relations representative for groups of companies in Ontario and Quebec. In 1963 he formed his own industrial relations consulting firm and was active in industrial relations consulting work for many trucking firms and related industries. Since 1971 Mr. Murray has been a Member of the Public Service Staff Relations Board. He is also a Member of the Board of Trade Industrial Relations Committee and the Personnel Association of Toronto.

#### PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britain and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of CUPE and presently holds the office of Ontario Regional Director of C.U.P.E., and Vice-President of the Ontario Federation of Labour.

#### ROBERT W. REDFORD

Mr. Redford has been a part-time Member of the Board representing management for the last four years. Having graduated from Queen's University with a degree of B.A. (Economics) in 1963, he joined Canada Packers Inc., where he worked for 16 years in the employment relations function. His final position at Canada Packers was Corporate Manager, Personnel Services. Mr. Redford is currently the Executive Director of the Personnel Association of Toronto and the Personnel Association of Ontario.

#### JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and a LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

#### MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has



been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

#### WILLIAM F. RUTHERFORD

Mr. Rutherford has been a full-time Member of the Board representing labour for three years. He was the Houdaille Plant Chairman for the UAW for 37 years. He was a Member of the Oshawa District Labour Council between 1944 and 1977 and a Member of the Canadian UAW Council during 1948 to 1971. Mr. Rutherford has served on the Board of Referees of the Unemployment Insurance Commission for 12 years.

#### HARRY SIMON

Mr. Simon has been a part-time Board Member representing labour since July of 1974. He became actively involved in the labour movement in 1926. From 1943 to 1956 he was the Canadian representative to the American Federation of Labour. From 1958 to 1974, Mr. Simon was the Ontario Regional Director of Organization of the Canadian Labour Congress; he was also a Member of the Labour-Management Arbitration Commission from its inception in 1969 until its abolition in 1979. In addition to these appointments, Mr. Simon has served on various boards and commissions representing the Ontario Federation of Labour and the Canadian Labour Congress.

#### ROBERT J. SWENOR

Mr. Swenor was appointed as a part-time Board Member in February, 1982, to represent management. Mr. Swenor, who holds the degrees of B.A. and M.B.A. from McMaster University and a certificate in Metallurgy of Iron and Steel, has been employed with Dominion Foundries and Steel Ltd., Hamilton, since 1970 and is presently its Assistant Secretary. He is Vice-Chairman of the Canadian Manufacturers' Association Legal Advisory Committee on Environmental Law and also serves on the Legislation Committee, the Sub-Committee on Corporation Law and the Environmental Quality Committee of that organization.

#### W. H. WIGHTMAN

Mr. Wightman was first appointed to the Board in 1968, becoming a full-time member in 1977, and resigning from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canada Manpower and Immigration Council, the

Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He was a founding member of the McMaster Medical Centre Advisory Council on Occupational Health and Safety. His writing credits include papers presented at the World Employment Conference in Geneva and symposia at Vienna and Panama City. He is a graduate of Clarkson College (BBA'50) and Columbia University (MS'54) where he lectured while engaged in doctoral studies.

#### **JAMES P. WILSON**

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. He has been the Labour Relations Consultant to the Electrical Contractors Association of Ontario for the last 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association of Ontario, Charter Member of the Canadian Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

#### **NORMAN A. WILSON**

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

#### **Registrar and Chief Administrative Officer**

##### **DON K. AYNSLEY**

Having served in the Canadian Armed Forces between 1945 and 1960, Mr. Aynsley joined the Board in 1961 in a clerical position. In 1969 he became an examiner and in 1974 assumed duties as a Labour Relations Officer. In 1976, by Order-In-Council, Mr. Aynsley was appointed Registrar of the Board.

#### **Manager Field Services**

##### **JACK A. MacDONALD**

Mr. MacDonald joined the Field Staff of the Board in 1971, following an extensive career in the Employee Relations area of Canada Packers Limited during which he was actively involved in contract administration, negotiation, conciliation and arbitration proceedings. In 1976, Mr. MacDonald was promoted to the position of Senior Labour Relations Officer and in 1981 to the newly created position of Manager of Field Services.

## Senior Labour Relations Officers

### STEWART V. NETHERTON

Mr. Netherton joined the Board in 1977 as Labour Relations Officer, and has been active in Ontario Labour scene since 1952. He was a Charter Member of Brampton and District Labour Council, and has held various offices in the International Chemical Workers Union including Local President, International Representative, International Vice-President and Canadian Director.

### LARRY STICKLAND

Mr. Stickland joined the Field Staff in 1974 as a Labour Relations Officer. Previously he spent several years with the International Association of Machinists and Aerospace Workers in various offices which included President of Local 901 and executive positions at the District and Provincial local. Mr. Stickland was promoted to the position of Senior Labour Relations Officer in 1982.

### NORMAN WILSON

Mr. Wilson was appointed a Senior Labour Relations in 1982, following an appointment to the Field Staff in 1977. He was previously an Officer with the Canada Labour Relations Board for four years. Subsequently to several years of full time association with the trade union movement where he held various positions including Canadian Regional Director of the International Brewery & Distillery Workers. Born in England and educated in England and India, Mr. Wilson attended the Royal Military College.

## STAFF DEVELOPMENT

In an effort to keep the Board and its staff abreast of current thinking within the labour relations community, a series of seminars, conferences and meetings were held during the past year. Also, several members of the Board presented papers at conferences throughout the year.

### Seminars

1. A day-long Vice-Chairmen's Seminar to analyze labour relations trends and look at the direction of administrative law in the courts. Participants were: Richart Fortier, Vice-President of Northern Telecom; R.C. Baskin, Executive Assistant to the National Director of the Energy & Chemical Workers Union; Ian Scott, Q.C.; Owen Shime, Q.C.; and Professor Harry Glasbeek of Osgoode Hall Law School.
2. A full Board seminar was held with Professor Innis Christie on the topic of "The Relationship of Collective Bargaining to New Developments in Employment Law."
3. A day-long seminar for Labour Relations Officers on Dispute Resolution with Stanley Hartt, Owen Shime, Q.C., Martin Teplitsky, Q.C. and Vic Scott.

4. A 2 day course for the administrative support staff on "The Office of the Future" to familiarize them with technological changes that are and will be occurring.
5. A Vice-Chairmen's seminar to review "The Charter of Rights" where the luncheon speaker was His Honour, Judge George Ferguson, a former Vice-Chairman of the Board, on the subject of effective decision writing.

### Meetings

The Board arranges a series of afternoon meetings where Board Members, officers, and staff can exchange views with a number of experts from within the Ministry of Labour and from the community. The following were some of the participants at these meetings: Justices of the Supreme Court, The Honourable Mr. Justice Robert Montgomery and The Honourable Mr. Justice John Osler (pre-trial hearings and trial administration); Professor Ron Ellis (dependent contractors); Don Munroe, former Chairman of the B.C. Labour Relations Board (recent developments in British Columbia); and Dr. Anne Robinson, Assistant Deputy Minister of Labour (Occupational Health and Safety).

In addition, the Chairman and several Vice-Chairmen and senior staff met with labour and management representatives of the construction industry and industry in general and discussed various labour relations concerns in the community.

The labour law subsection of the Ontario chapter of the Canadian Bar Association invited several members of the Board to be guest panelists at a monthly meeting which was devoted to practicing before the Ontario Labour Relations Board.

### Conferences

The Board co-sponsored a day-long labour relations conference with the Personnel Association of Toronto at which various Board Vice-Chairmen were panelists and speakers.

### Exchange Program

As part of its staff development initiative and in an effort to promote better understanding between practitioners in the labour relations community and the Board's field staff, the Board has introduced a programme whereby an employer or union may send an individual to the Board to work with our Labour Relations Officers for up to three months and, when work load permits, Labour Relations Officers are sent to either an industry or a union office for a similar period.

This past fiscal year the Toronto Construction Association sent Janet Trim, a Labour Relations Officer with the Association to work for three months with our field staff. Senior Labour Relations Officer Larry Strickland spent two months with the Association in the previous year.



## V HIGHLIGHTS OF BOARD DECISIONS

### **Treatment of Employees Moving Between Full-Time and Part-Time Bargaining Units**

The applicant had applied for certification with respect to a full-time bargaining unit in late February, and later applied for a part-time bargaining unit in March. In the second application, the union asked to have the cards that were filed in the full-time unit applied to any persons who were also employees found to be in the part-time unit. This overlap of employees between the two bargaining units occurred because of the application of the Board's seven week rule. The employer argued that it was unfair to apply membership evidence to both applications. The union responded by arguing that the membership cards may be applied to both applications and the employees may also fall into both bargaining units depending on the number of hours worked in the relevant time period prior to the filing of the application. In its decision the Board applied the normal seven week rule to determine who were part-time employees. The fact that some employees found to be in the full-time unit in the earlier application were now found to be part-time employees in the instant application, merely reflects the fact that employees may change bargaining units depending upon the actions taken by their employer. The Board also found that there was nothing in the Board's practice relating to the transferring of membership evidence from the full-time application to the part-time application. The Board, in making this determination, also included in the unit employees who might appear in both bargaining units as well as the membership evidence that might appear in both bargaining units. The Board also set out the practice with respect to transferring of membership evidence and reiterated that the trade union seeking the transfer of such evidence from one file to another file is normally required to file a new Form 9 declaration concerning the transferred membership evidence. (*Westgate Nursing Home Inc.*, [1981] OLRB Rep. Apr. 503).

### **Union Certified Fifteen Years Earlier Found by the Board not to be a Trade Union at Present Time**

In this application for certification, both the employer and the intervener employee association raised as a bar the current collective agreement between them. However, the applicant challenged the validity of the agreement on the ground that the association was not a trade union within the meaning of section 1(1)(n) [now section 1(1)(p)] of the Act. The Board agreed that even though it had certified the association some fifteen and half years previously, the association was no longer a trade union. It based its finding on the absence in this case of a constitution or any other contractual arrangement binding the employees together as an association. The Board concluded that the original organization had dissolved and that agreement raised as a bar was therefore not a collective agreement under the Act. (*Fashion Footwear Ltd.*, [1981] OLRB Rep. Apr. 454).

### **Board Entertaining Application of Employee Association to Displace Incumbent Union Subsequent to Two Unsuccessful Termination Applications and Directing Pre-Hearing Vote before Association proving its Status**

The intervenor was certified as the bargaining agent for the respondents' employees in March, 1979. A legal strike commenced in September 1979. A termination application was brought in February, 1980 and dismissed because it was untimely. A second termination application was brought in March, 1980 and was dismissed on the grounds that the Board was not satisfied that at least 45% of the employees in the bargaining unit had voluntarily signified

their desire to no longer be represented by the intervenor. In February 1981 an application for certification was filed by an employee association. The intervenor argued that the Board should exercise its authority under section 103(2)(i) to bar the application on the grounds that the intervenor had not had sufficient time to negotiate a collective agreement subsequent to the dismissal of the second termination application. The Board decided to entertain the application on the grounds that the intervenor had had ample opportunity to negotiate a collective agreement, including the statutory 12 month period from the date of certification and the 6 month period from the commencement of the legal strike. The Board ordered the holding of a pre-hearing representation vote and ordered that the ballot boxes remain sealed until the applicant had established its status as a trade union. Subsequently the Board found the applicant to be a trade union within the meaning of 1(1)(n) of the Act. (*Ontario Hospital Association (Blue Cross)* [1981] OLRB Rep. April 468; [1981] OLRB Rep. June 763).

### **Reorganization of Employee Complement to Insulate Employer from Possible Future Unlawful Strikes not Contrary to the Act**

The employees of the hospital had engaged in a strike which was admittedly unlawful. At the end of the strike, the hospital failed to recall some 38 full-time nurses' aides and discharged 6 other part-time nurses' aides. The hospital in turn hired registered nurses and registered nurses' aides to fill the positions created by these actions. The union alleged the employer had unlawfully locked out its employees.

On the evidence the Board found that the reasons for the failure to recall were two-fold. First, the hospital wanted to upgrade its nursing service, which it did by reducing the number of nurses' aides and increasing the number of registered nurses and registered nurses' aides. The high proportion of nurses aides had been a concern for some time. Second, the hospital wished to protect itself in the event of another strike by the complainant union.

The Board held that notwithstanding the fact that the hospital took advantage of the strike to achieve its aims, it did not violate the *Labour Relations Act*. The hospital was not in breach of the Act when it discriminated against those part-timers who participated in the unlawful strike. The conduct of the hospital did not meet the definition of a lock-out in the Act as its failure to recall was not designed "to compel or reduce [its] employees . . . to refrain from exercising any rights or privileges under this Act." The employees in engaging in an unlawful strike were not exercising any right or privilege under the Act. (*The Perly Hospital*, [1981] OLRB Rep. June 769).

### **Collective Agreement Containing Bargaining Unit World-Wide in Scope Bar to Certification Application**

The union's application for certification was opposed by the intervening union as being untimely. The respondent was a large company which performed its work all over the world. It had a collective agreement with the intervenor covering all "press erectors" working for the company in any part of the world. The intervenor argued that this agreement barred the application for certification. The applicant argued however that the application was not barred on two grounds — first that the intervenor, which was based in Chicago, Ill. had no status within section 1(1)(n) [now section 1(1)(p)] as it had no local presence in Ontario; and second that the agreement was not a collective agreement within section 1(1)(e) of the Act.

The Board dismissed the application as being untimely. The Board preferred the

reasoning in *La-Z-Boy Canada Ltd.*, [1981] OLRB Rep. Apr. 460 to that in *A. H. Boulton*, 52 CLLC ¶17,035 in holding that a union need not have a local presence in Ontario in order to hold and obtain status within section 1(1)(n). The Board noted that the intervener had members in Ontario who were able to take part in the union's internal activities. The Board also held that the mere fact that the agreement was multi-national in scope did not affect its status as a valid agreement within Section 1(1)(n). (*Rockwell International Corporation*, [1981] OLRB Rep. June 780).

### **Employer Changing Employee's Personal Privilege during Statutory Freeze Prohibited**

An employee had enjoyed a personal privilege since 1970 of being excused from working on Saturdays. Sometime after the complainant applied for certification the respondent began requesting that employee to work on Saturdays. After refusing to work on Saturday for four consecutive weeks, the employee was discharged.

The Board held that in attempting to alter a privilege of employment after the application for certification was made, the employer violated the freeze period set out in section 70(2) [now section 79(2)]. The Board ordered that the employee be reinstated with back-pay and that his prior working conditions be restored. (*Cloverleaf Hotel*, [1981] OLRB Rep. June 630).

### **Board Deferring Taking of Pre-Hearing Vote at Request of Applicant Pending Determination of Trade Union Status of Employee Association**

The union applied for certification and requested that a pre-hearing vote to be held. An employee association which had not previously established its trade union status also applied for certification by intervention. The applicant requested the Board to defer the pre-hearing vote until the Board could determine the status of the association. However, the association asked the Board to proceed with the vote and reserve the status issue for a later hearing.

The Board decided to defer the vote until after the status issue was determined. The Board noted that its practice of directing a pre-hearing voted and reserving outstanding issues for subsequent hearings was designed to avoid the prejudice to an applicant that would be caused by a delay in the vote. However in this case the applicant asking for the vote consented to a delay. Therefore, a deferral of the vote was appropriate. (*Tri-Canada Inc.*, [1981] OLRB Rep. June 794).

### **Union Violating Duty of Fair Representation by Failing to File Unfair Labour Practice Complaint Against Employer**

The complainant, an attendance counsellor of the employer School Board had her job eliminated in November 1980. She contended that she was discharged because of her active participation in union activity. (She led a legal strike and had been critical of the employer in the media). Her request that a Section 79 [now Section 89] complaint be filed by the union was denied. The union stated that the employer was entitled to eliminate jobs and further that it could not prove that the employer's actions were motivated by anti-union animus. The union suggested that a grievance under the collective agreement should be filed instead and this was done.

During the grievance procedure, the employer offered the employee the opportunity to



bump into a janitor's position. Accepting a janitor's position would have meant a substantial decrease in salary. The union strongly recommended that she accept the offer. She refused this offer as well as an offer to become a "contract employee", which would have taken her out of the bargaining unit. She continued to insist on the filing of a section 89 complaint. The union continued to refuse stating that it would not produce any positive results.

This complaint was filed against the union on the basis of its refusal to file a section 89 complaint. It was alleged that the refusal was arbitrary and that the union had therefore breached its duty of fair representation as set forth in section 60 [now section 68]. (Note: Subsequent to the hearing on this matter, another panel of the Board upheld the complaint the employee had filed on her own behalf against the employer).

The Board held that the decision was made in an arbitrary manner, contrary to section 68. The union had failed to put its mind to the various considerations relevant to deciding whether or not a section 89 complaint should be filed and the union was therefore not in a position to make a reasoned decision. By way of remedy, the union was ordered to compensate the complainant for all reasonable costs incurred in pursuing her Section 89 complaint against the employer. (*Canadian Union of Public Employees, Local 2327*, [1981] OLRB Rep. June 623).

#### **Board not Treating Seasonal Fluctuations in the Work-Force as a "Build-Up".**

The applicant sought certification for all of the owner-operator truck drivers of the respondent. The respondent asked the Board to defer considering the application on the grounds that the work force in the bargaining unit at the time of the application was only a small fraction of the total work force during the peak summer months. However, the Board refused to defer the application on the grounds that most of the additional drivers engaged by the respondent during the summer months were either employees of fleet operators or owner-operators connected with independent brokers and would therefore be unaffected by the certification. The Board also emphasized that it would not apply "seasonal employment" policy to the construction industry. (*Indusmin Ltd.*, [1981] OLRB Rep. Dec. 1790).

#### **Unfair Labour Practices by Employer, Including Surveillance and Infiltration Causing Board to Certify Union**

The union filed a section 79 [now section 89] complaint alleging that the employer committed various unfair labour practices as well as an application for certification pursuant to section 7a [now section 8]. The Board accepted that the employer committed various unfair practices which included the recruiting of someone to engage in surveillance over employees; attempting to discredit the union by telling employees that certification would lead to a loss of fringe benefits; spreading rumours that management knew the names of those who signed union cards; and encouraging employees to participate in anti-union activity. The employer argued that despite its activities there was no need to grant a section 8 certificate as it would endorse certain safeguards to ensure that a secret ballot would reflect the true wishes of the employees.

Nevertheless, the Board certified the union without a vote. The Board held that because of the employer's flagrant violations of the Act the true wishes of the employees could not be ascertained. It was particularly concerned about the rumour that management knew the



names of union members. The Board also held that that membership support of 35% of employees in the part time unit was adequate for collective bargaining, especially since 50% support in the full-time unit showed that there was a significant core of support in the workplace. Apart from granting the certificate the Board granted other remedies including the normal 'cease and desist' and 'union access' orders. (*Robin Hood Multi-Foods Inc.*, [1981] OLRB Rep. July 972).

### **Board Refusing Section 8 Certificate where Two Unions Attempting to Organize**

Both the applicant union and the intervener union had achieved moderate success in their organizing campaigns. However both campaigns were abruptly brought to a halt when the employer laid off four employees. Two of the employees were active in the intervener's campaign and one of the other two was instrumental in the applicant's campaign. The evidence showed that the employer actively sought out employees who were instrumental in supporting the unions and that it laid off these employees because of their union activity. After the lay-offs, a pre-hearing vote requested by the applicant was held. Eleven employees were in favour of the applicant and 45 were opposed. The applicant sought certification without a vote pursuant to section 7a [now section 8].

The Board held that the applicant did not waive its right to section 8 certificate merely because it continued with the pre-hearing vote. Nevertheless the Board stated that it was inappropriate to grant a section 8 certificate where there were two competing unions whose campaigns were both affected by the employer's unfair practices. The Board therefore granted other remedial orders including reinstatement of the laid-off employees with back pay, a posting order and reasonable access orders. (*Chandelle Fashions Ltd.*, [1981] OLRB Rep. July 858).

### **Union Refusing Non-Member Right to Appeal Decision not to Arbitrate Grievance Contrary to Section 68**

The grievor was discharged after an investigation into allegations of theft and improper conduct. After the union failed to have the grievor reinstated during the grievance procedure, the union refused to take the grievance to arbitration on the grounds that the facts clearly implicated the grievor. The grievor requested an appeal to the National President but was told that the union's constitution allows such an appeal only to members of the union. The grievor not having paid dues for three months (since his discharge) had ceased to be a member. Thus the appeal was denied. It was this denial of the right to appeal that formed the basis of the section 60 complaint, [now section 68] that the union represented the complainant in a discriminatory fashion.

The Board held that by treating members differently than non-members with respect to the right of appeal, the union was in violation of section 68. The union was directed to entertain the grievor's appeal and consider its merits. (*Alexander Barna*, [1981] OLRB Rep. July 815).

### **Dismissal for Causing Unlawful Strike on Pretext of Health and Safety Issue Upheld**

The complainant had made several complaints regarding work assignments and ultimately caused an unlawful walkout but attempted to justify it by stating that he had called the employees off the job through a concern for their safety. After he had been discharged, a

grievance was filed which came before the Board for arbitration under section 124 of the Act. It was alleged that the discharge was contrary to section 24(1) of the *Occupational Health and Safety Act*.

Due to the importance of health and safety, the Board was reluctant to conclude that an employee was motivated for other reasons. However, in this case it was clear that the complainant was using safety as an excuse for causing a disruption in work. Therefore the grievance was dismissed. (*Cooper Construction Company Limited*, [1981] OLRB Rep. Aug. 1113).

### **Union's Procedure for Conducting Ratification Vote Upheld**

An employee complained that the union had contravened the requirement of secrecy in the manner it conducted a ratification vote. There was no screen or curtain erected at the voting place, and no box was provided to deposit the marked ballots. Instead, they were simply folded and placed on the scrutineer's table.

After an extensive review of the legislative requirement of secrecy, the Board concluded that it had a limited purpose and did not dictate how a vote was to be conducted beyond requiring secrecy. The Board adopted an objective test as to what would constitute a violation of the Act. In this case there was no evidence that any employee had been concerned about secrecy at the time of the vote and the Board concluded that no reasonable employee would have felt apprehension. Therefore the complaint was dismissed. (*R.C.A. Limited*, [1981] OLRB Rep. Aug. 1159).

### **Freelance Burlesque Entertainers not Employees under the Act**

This case involved a series of four certification applications made with respect to burlesque dancers who were hired by the respondent taverns. An issue arose as to whether the dancers were employees entitled to engage in collective bargaining under the *Labour Relations Act*.

The Board noted, *inter alia*, the transitory nature of the relationship between the dancers and the taverns, the lack of supervision, the wide discretion allowed the dancers, the absence of discipline, etc., and concluded that the dancers (other than two "house dancers") were not employees. On the other hand, two house dancers who had a more permanent relationship with the respondents were found to be economically dependent on them and therefore held to be employees within the meaning of the Act. (*Algonquin Tavern et al.*, [1981] OLRB Rep. Aug. 1057).

### **Union's Refusal to Fund Civil Action Against Employer and to Process Grievance not Breaching Duty of Fair Representation**

The complainant alleged that her union had breached the duty of fair representation and that the union had failed to bargain in good faith and make every reasonable effort to make a collective agreement.

After protracted negotiations over a new collective agreement, the union consulted the two employees in the bargaining unit regarding the possibility of a strike. However, the employees were not prepared to do so and the impasse remained. In August, 1980, the

employer's operation was put into trusteeship and shortly thereafter the complainant was discharged.

The employer took the position that since the collective agreement had long since expired there was no basis for claiming a contravention of its terms. The union obtained an independent legal opinion which substantially confirmed the employer's position. On the basis of that opinion, the union decided that there was no point in proceeding to arbitration.

The Board held that even assuming that the complainant had status to bring a section 14 complaint, there would be no basis for such a complaint in this case.

Furthermore, the union's treatment of the grievance was not arbitrary, uncaring or perfunctory. It cannot be considered arbitrary for a union to decide against proceeding to arbitration when its own solicitors have advised that the case is bound to fail.

The complainant raised the additional argument that the union should be required to fund a civil action commenced against the employer. The Board rejected this, noting that such an action involves common-law rights which are personal to the grievor and entirely remote from the sphere of collective bargaining to which section 68 was intended to apply. (*Betty Lavoie*, [1981] OLRB Rep. Aug. 1098).

#### **Board Reviewing Principles for Determining Whether Single or Multi-Plant Unit Appropriate**

The applicant union applied for certification for all the employees of the respondent in Richmond Hill. The respondent operated 3 separate plants in Richmond Hill within a one and one half mile radius. The respondent argued the administrative independence of these plants made a multi plant unit inappropriate. The Board received the criteria which it has developed to determine the appropriateness of bargaining units and decided that in the circumstances of this case 3 separate single-plant units would be appropriate. (*Magna International*, [1981] OLRB Rep. Sept. 1260).

#### **Board Reviewing Criteria for Determining Appropriate Bargaining Unit for Retail Store**

The applicant union sought bargaining rights with respect to employees of one of the employer's four stores in Metropolitan Toronto. The company contended that the appropriate unit should include all of its stores in the metropolitan area.

The Board held that there is no presumption in favour of the most comprehensive bargaining unit. In each case the Board must judge the unit's appropriateness as per the criterion established in the *Usarco* case. The Board concluded that in this case supervision and control were exercised at a local level and the employees of each store had a distinct and separate community of interest. Consequently, the single store unit sought by the applicant was appropriate. (*K-Mart Canada Limited*, [1981] OLRB Rep. Sept. 1250).

#### **Employer Attempting to Undermine Trade Union Through Coercive and Discriminatory Conduct Directed at Union Members**

The union alleged a series of unfair labour practices against the employer, including bad faith bargaining, violation of the "freeze period", interference in the administration of the union and discrimination and intimidation against union members.



The union's main argument was that the employer, a town, by withholding the annual increase granted to non-union employees, and by insisting on a form of collective agreement which would leave the members of the bargaining unit continually behind the other employees, sought to convey to the members of the bargaining unit that they were being penalized for electing to engage in collective bargaining, and thus intimidate them into abandoning their bargaining agent.

The employer argued that as the union's business agent had signed a memorandum of settlement agreeing to the employer's terms, the union was precluded from claiming that said terms were discriminatory or punitive. This memorandum of settlement had been expressly made subject to ratification by the members of the bargaining unit. Immediately following the signing of said memorandum, the Town Reeve had sought out the employees in the bargaining unit and advised them that they had nothing to gain from ratifying the agreement as a retroactive wage increase would be forthcoming in any event. The employees failed to ratify the agreement and subsequently, and the Town granted them the retroactive pay increase.

The Board held that the Town's failure to implement the customary pay increase for members of the bargaining unit at the same time as for other employees was a violation of the statutory freeze.

The Board also held that the union's act of signing the memorandum of settlement did not vitiate the present complaint. The employer's proposals were designed through discrimination and intimidation to cause the employees to abandon the union. Further, the Reeve's intrusion into the ratification process represented an unacceptable interference in the administration of the union.

The Board ordered that the parties resume collective bargaining and that the employer table a monetary position that would not discriminate against the members of the bargaining unit in comparison with the non-unionized employees. The employer was ordered to pay monetary damages for its breach of the statutory freeze. (*The Corporation of the Town of Meadford*, [1981] OLRB Rep. Sept. 1202).

#### **Board Dismissing Application for Certification by Intervention by an Employee Association Obtaining Support from an Employer during Organizing Campaign by Rival Union**

An employee association which intervened in a certification application was formed in secret by a small group of union opponents during an organizing drive by the U.A.W. The association was provided with an employee list by the employer.

The U.A.W. challenged the association's trade union status. The Board stated that where an association has no previous bargaining history, and where it is formed secretly in the shadow of a union's organizing campaign, it is incumbent on the association to show that section 13 of the Act does not apply. Furthermore, the Board will give careful consideration to any evidence suggesting a non-arm's length relationship with the employer. In this case, the provisions of the employee list was held to be "support" within the meaning of section 13 and thus the association could not be certified. (*Tri-Canada*, [1981] OLRB Rep. Oct. 1509).

#### **Union Entitled to Accept Employer Offer Notwithstanding Members Failure to Ratify Agreement**

In this case the employees narrowly rejected the employer's offer in a ratification vote.



However, the union felt that striking would be futile and decided to accept the offer notwithstanding the failure to ratify. A group of employees filed a complaint with the Board alleging violations of sections 15, 72, and 68.

The Board held that there was no evidence of bad faith bargaining on the part of the union and, in any event, individual employees had no status to bring a section 15 complaint. The Board also held that section 72 must be read literally and there is nothing in the section which makes a ratification vote binding on the employees. The Board stated that the union had not acted arbitrarily in violation of section 68. Under the circumstances, the union honestly believed that the best strategy was to get a “foot in the door” through a first collective agreement and to attempt to improve on it in later agreements. (*K-Mart Distribution Centre*, [1981] OLRB Rep. Oct. 1421).

### **Sale of a Business during a Legal Strike Suspends the Right to Continue the Strike**

The Board considered, for the first time, the effect of a sale of a business upon an ongoing strike. The Board held that the sale suspended the right to strike and that if continued against the successor employer the strike would be unlawful. However, in these circumstances, the Board refused to make a declaration of an unlawful strike. The Board stated that the union must give new notice to bargain and go through the conciliation process with the new employer. The new employer should be given an opportunity to respond to the union demands, since his circumstances may well be different from the former owner. (*Davidson-Walker Funeral Homes*, [1981] OLRB Rep. Oct. 1359).

### **Board not Excluding Pharmacists from Hospital Paramedical Bargaining Unit**

In an application for certification the union and the employer agreed on a bargaining unit of all paramedical employees. However, the Hospital pharmacists objected to their inclusion in such a unit on the grounds that they exercised supervisory functions over the pharmacy assistants and on the grounds that, as professionals, they did not share a community of interest with the other paramedical employees.

The Board held that the supervision exercised by the pharmacists was that which emanated from their professional training rather than the assignment of truly managerial functions which would justify an exclusion under section 1(3)(b) of the Act.

The Board would not allow further fragmentation by allowing the pharmacists to exclude themselves from what had already (through previous fragmentation of the paramedical group) evolved into a unit composed solely of “professionals” being the occupational therapists, pharmacists, psychologists, psychometrists, social workers, speech therapists, audiologists and physiotherapists. (*Toronto East General and Orthopaedic Hospital Inc.*, [1981] OLRB Rep. Nov. 1672).

### **Union Supporter Disciplined for Harassing Employees not a Violation of the Act**

The employer received complaints from the employees that the grievor had been approaching and bothering them to sign cards for another union and in the process was disrupting their work. The employer summoned the grievor and told him to stop bothering the employees. Then the employer spoke to the workers over the intercom system telling them that he had received the complaints in question and warned employees to make sure they find out

what it was that they were signing before doing so. He did not make reference to any trade union by name nor did he refer to the grievor. He said that he did not care which union represented the employees. Several days later the employer received a further complaint from four employees that the grievor was bothering them, urging that they vote against the terms of settlement reached by the incumbent union and the employer. At this stage the grievor was issued a written warning.

The grievor alleged that he was disciplined for his trade union activities. The Board held that the employer's disciplinary action was in response to employee complaints of harassment — not as a result of anti-union motive. (*Avon Sportswear*, [1981] OLRB Rep. Nov. 1542).

### **Successor Employer not Tainted by Anti-Union Animus of Predecessor Employer Conduct**

The complainant was certified as the bargaining agent for the employees of the respondent, Sunnylea Foods Ltd., in April, 1980. The owner of Sunnylea Foods was opposed to the union on religious grounds. In October, 1980, Sunnylea Foods ceased operations. In December, 1980 the respondent, Maple Leaf Egg Products Ltd., entered into an agreement with Sunnylea to purchase Sunnylea's assets. This agreement also provided that Sunnylea would supply Maple Leaf with eggs. The complainant requested a declaration that Maple Leaf was a successor employer and that its bargaining rights in relation to Sunnylea be extended to Maple Leaf. The complainant alleged that all the respondents had violated sections 64, 66 and 70 of the Act.

The Board found a "sale" of a business from Sunnylea to Maple Leaf despite the fact that the transaction took the form of a sale of assets. However, it refused to extend the complainants bargaining rights to Maple Leaf under section 63 because Maple Leaf's operations were outside the geographical scope of the certification obtained by the union in relation to Sunnylea. The Board found that Maple Leaf's choice of location was not influenced by anti-union motive and therefore the Board refused to grant the complainant bargaining rights in relation to Maple Leaf as part of a remedial order. The Board rejected the complainant's argument that the mere knowledge on the part of Maple Leaf of Sunnylea's anti-union animus was sufficient to extend liability to Maple Leaf for the unfair labour practices of Sunnylea. The Board reviewed the American jurisprudence in this area and noted that the National Labour Relations Board and the courts had only held successor employers liable for predecessors' unfair labour practices where there were outstanding proceedings against the predecessor employer at the time the transaction was entered into. (*Sunnylea Foods Ltd.*, [1981] OLRB Rep. Nov. 1640).

### **Build up Principle not Applicable to Seasonal Fluctuations of Work-Force**

The parties had originally agreed that part-time employees and students should be included in one bargaining unit. Subsequently a reconsideration of this description was sought, when the employer planned changes to his operation so that he would be hiring 12 summer students in addition to the already existing 6 part-time positions. The employer alleged that the hiring of these new employees was a permanent rather than cyclical build up and that the Board should defer granting a certificate until the number of employees became more representative.

The Board refused to defer, noting that the employee complement at the time of the application was representative of the union for approximately 10 months out of every year.

The Board found that what the employer was in fact relying on in this case was a seasonal fluctuation in the workforce. The Board noted that it does not apply seasonal fluctuations in the number of employees to the build-up principle or to the bargaining unit descriptions except in the canning and tobacco harvesting industries. (*Filkon Foods*, [1981] OLRB Rep. Dec. 1772).

### **Damages Awarded for Continuing Strike after Board Finding that Final-Offer Vote Binding on Union**

In an earlier Board decision, the trade union was held to have breached its duty to bargain in good faith when it failed to enter into a collective agreement after its members had voted in favour of the employer's last offer. The issue before the Board was the determination of the remedies for this breach of the duty to bargain in good faith.

The employer claimed damages in excess of \$700,000.00 (including security expenses, truck rentals, and damage to the rented trucks). The Board examined the relevance of the participation of union officials in violent conduct in assessing the awarding of substantial damages where the trade union challenges the result of a final offer vote and refuses to act upon it.

The Board held that if an objection to the voting results is reasonable, monetary awards may only run from the date the Board makes its determination as to the validity of the objection. If the objections are dismissed but the trade union continues to ignore the vote results, then from this point in time the Board will award full damages.

In this particular case, the trade union's objections to the vote were found to be reasonable, so that damages that were incurred only *after* the trade union's objections were dismissed by the Board, were considered (November 18, 1981). The Company's rental and repair expenses incurred after November 18th, 1981, were allowed. The company's security costs after November 18, were limited to one-third of those claimed as being legitimate costs expended to protect company vehicles through a hostile picket line. The total award of damages was \$13,093.19. (*Canada Cement Lafarge*, [1981] OLRB Rep. Dec. 1722).

### **Union Official Seeking Elected Union Office Protected by *Labour Relations Act* from intimidation.**

The complainant, Frank Manoni, alleged that the procedures for free and democratic election of union officials provided for by the union's constitution had been frustrated by a pattern of intimidating and coercive conduct by responsible union officials. He had won an internal appeal which directed the taking of new nominations and the holding of a new vote. The local union however, took the matter to a convention of the International union and the convention upheld the local's appeal and the results of the election. The complainant could not attend this convention held in Florida because of the expenses involved.

The complainant argued before the Board that the trade union was in violation of sections 68 and 70 of the Act.

The Board confirmed its general policy that it will not play the role of a watch-dog over internal union proceedings. However, it will intervene where there are allegations of breaches of the Act. Here if there is a *prima facie* allegation that the Act has been violated it will entertain the complaint, rather than defer to internal trade union machinery.



The Board dismissed the complaint as it related to section 68 because the duty of fair representation is owed only to “employees in the bargaining unit” and the complainant was not one. The alleged conduct of the union did not directly prejudice employees in relation to their employers.

The Board held that the prohibition against intimidation and coercion for union activity in section 70 is not only for employers. Section 70 protects persons from trade unions as well. The Board held that a *prima facie* case had been made out and decided to hear the evidence. The question to be decided after hearing the evidence is whether the internal processes of free union elections have been frustrated by a pattern of intimidatory and coercive conduct of trade union officials. (*Frank Manoni*, [1981] OLRB Rep. Dec. 1775).

### **Union Initiating Changes in Collective Agreement which Result in Lay-Offs not Violating Duty of Fair Representation**

The owner-operator truck drivers in the bargaining unit represented by the respondent union were paid by the load hauled. The collective agreement contained provisions restricting the number of drivers on the seniority list to 34. It also prohibited lay-offs and provided that available work would be shared among all of the drivers on the list. Since the amount of work available was down, the senior employees petitioned the union to re-open negotiations to amend the contract to permit lay-offs according to seniority. The union held a vote and recommended against re-opening. The vote was in favour of re-opening. However, since a majority of employees had not voted, the union felt that a decision of that magnitude was not justified, and the status quo was retained. The senior drivers petitioned again and a second vote was held. This time the motion to re-open negotiations to permit lay-offs was carried by a majority of the bargaining unit employees.

Bound by the majority vote, the union approached the employer to re-open negotiations and arrived at a settlement permitting lay-offs in reverse order of seniority, to replace the work sharing arrangement. This was ratified by the employees.

A month later 9 drivers at the bottom of the seniority list were laid off. Those laid off alleged that the negotiation of the amendment was a breach of the unions duty of fair representation, since the interests of senior employees were protected at the expense of the junior employees’ job security.

The Board noted that a union is often called upon to make a hard decision which may have serious economic impact on individuals. Such hard decisions are not unlawful *per se* so long as not made in a manner that is arbitrary, discriminatory or in bad faith.

When making these choices, the union is obliged to weigh the competing interests of the employees and make a considered judgment based upon objective justifications rather than the mere will of the majority. Here, the union’s decision in all the circumstances was a reasonable one, and neither the consequences of the decision nor the motive to do so violated the duty of fair representation. (*Dufferin Aggregates*, [1982] OLRB Rep. Jan. 35).

### **Union Restricting the Use of Casual Employees thereby Affecting their Job Security, not Acting Contrary to Duty Owed to those Employees**

Over the years the City had gradually reduced the number of permanent employees and



increased the use of casual employees. The respondent CUPE local which represented both categories of employees during the 1981 negotiations, arrived at a memorandum of settlement, which included provisions that affected the job security of the casual employees. The employees, including the casuals, voted and ratified the contract by an 87% majority.

The casual employees complained that the union had violated its duty of fair representation. The Board noted that when a union takes steps which adversely affect the job security of a minority of employees it represents it must show some objective justification for it. Here the increasing use of casuals was a real threat to the interests of the union, the permanent employees and casuals who aspired to become permanent. There was a legitimate fear of attrition to the bargaining unit with the ascendancy of casual employees who received no benefits under the collective agreement other than a negotiated wage rate. Therefore, the union had objective justification for its acts, and the section 68 complaint was dismissed. (*City of Toronto*, [1982] OLRB Rep. Jan. 124).

### **Employees Laid-Off Indefinitely a Day before Representation Vote Casting Segregated Ballots, but not Counted**

On the day before a scheduled representation vote, the employer informed the Board that a number of employees had been laid off. The employer requested that the votes of those employees laid off be segregated. The Board segregated the ballots and subsequently convened a hearing to determine the eligibility of the laid off employees to vote.

The Board reiterated the policy that as a general rule employees on indefinite lay off are ineligible to vote. However, the mere absence of a definite recall date (as was the case here) is not conclusive. The employees will not be eligible to vote if there was not reasonable expectancy of returning to work. On the facts of this case the Board found that expectations for continued employment for some employees laid off were legitimate and substantial, while for others the prospect of recall was quite uncertain. The Board held the former to be eligible to vote and the latter ineligible. (*S.G.S. Supervision Services Inc.*, [1982] OLRB Rep. Jan. 105).

### **Extreme Delay in Filing Complaint Causing Board to Refuse to Hear it**

Two years and 7 months after her discharge, the grievor brought a section 68 complaint against her union for its refusal to pursue her grievance. The grievor had originally hired counsel who had pursued an action against the employer at the Human Rights Commission and in the Courts. The trade union has never been joined in these actions. Only when the grievor obtained new counsel was a section 68 complaint filed with the Labour Board. While delay is usually considered in assessing damages, the Board found the delay in this case to be so extreme and prejudicial to the union that it declined to hear the complaints. (*Sheller Globe of Canada Ltd.*, [1982] OLRB Rep. Jan. 113).

### **Quality of Presentation and Failure to Retain Legal Counsel at Arbitration Hearing not Violation Section 68**

The grievor lodged a section 68 complaint against his trade union, alleging that the quality of the presentation at arbitration was so perfunctory and deficient as to be arbitrary. The grievor claimed relevant and necessary evidence had not been submitted, and that he should not have been denied the opportunity to bring his own counsel to the arbitration.

The Board held that in determining the adequacy of the quality of representation for purposes of section 68, the standard depends upon the experience and level of authority of the union officials involved. In the circumstances the official in question put his mind properly and without bad faith, discrimination or arbitrariness, to the grievance and its presentation at arbitration. Further, neither the employer nor the trade union had ever had a lawyer present at an arbitration, and the trade union properly felt that to allow a lawyer to participate would be contrary to the long standing relationship between the parties. It was not relevant whether the Board feels union counsel should have acted differently. The application was dismissed. (*General Motors of Canada*, [1982] OLRB Rep. Feb. 181).

### **Employer Improving Benefits and Working Conditions to Thwart Active Union Organizing Drive Violating Section 64**

For some time the company had experienced circulation difficulties because of shortage of staff. After the union commenced organizing, the company solicited grievances from employees and remedied their major grievance, and the one which likely caused the union to be present, which was the shortage of staff. The union submitted that soliciting employee grievances and remedying them with the objective of defeating the union was an unfair labour practice. The employer took the position that it was simply responding to a business problem, and that it was entitled to do so at any time.

The union also claimed that certain letters addressed to employees constitute undue influence in breach of section 64.

Based on these and other allegations, the union sought certification without a vote pursuant to section 8 of the *Labour Relations Act*.

Reviewing the American jurisprudence, the Board held that in the absence of past practice, solicitation of employee grievances during a union's organizing campaign with an express or implied promise to remedy them is unlawful. This is so whether or not the promise is made conditional upon the defeat of the union. Even though there were business reasons for the employer conduct, it was at least partly motivated by the desire to defeat the union. This is indicated by the timing of the remedial measures taken.

The Board held that the letters in question were within the bounds of the employer freedom of speech protected by section 64. In coming to this conclusion, the Board declined to adopt the restricted interpretation of free speech taken by the Canada Labour Relations Board in *American Airlines*.

The Board found that the violation established was not such as would prevent the employees from disclosing their true wishes as a representation vote. Furthermore, the union had not approached at least 80% of the employees in the bargaining unit. The application for certification was dismissed and the Board issued a remedial order, including a posting of a notice and access to the union to address the employees. (*Globe & Mail*, [1982] OLRB Rep. Feb. 189).

### **Consolidation of Established Bargaining Units Refused**

C.U.P.E. held bargaining rights for separate bargaining units with the respondent employers. The trade union was seeking a 1(4) declaration that the City of Toronto and the

City of Toronto Non-Profit Housing Corporation was a single employer for the purposes of the *Labour Relations Act*, and specifically that the respondent should bargain on the basis of a single unit. The respondent had refused the union's request to have both groups of employees represented by the same local and covered by the same collective agreement.

The Board refused to exercise its discretion pursuant to section 1(4). It did not find the respondent to be a single employer nor would it consider altering the composition of the bargaining unit after the parties had entered into a collective agreement. The Board cited the decision of the Supreme Court of Canada in *Terra Nova Motor Inn Ltd.*, which held that from the time the first collective agreement is entered into it is that agreement which determines the scope of bargaining rights exercised by the union, and the certificate is no longer definitive. The Board's jurisdiction to amend a certificate does not extend its authority to amend the scope of bargaining rights incorporated into a collective agreement.

In essence the Board considered C.U.P.E.'s request to be a reconsideration of the certificate and merger of the bargaining units. It refused to allow this request, noting the potential procedural and substantive prejudice to the employer. (*City of Toronto Non-Profit Housing Corp.* [1982] OLRB Rep. Feb. 280).

#### **Successor Employer not Liable for Remedying Unfair Labour Practices Committed by Predecessor**

The trade union alleged in this section 89 complaint, that the predecessor employer had refused to continue to employ an employee because of trade union activities and that that successor employer's refusal to hire the employee after the sale was also an unfair labour practice. The union sought compensation from the predecessor for lost wages and an order for reinstatement against the successor employer.

The Board found that the predecessor's reason for terminating the employee was tainted by anti-union animus, and consequently ordered the predecessor to pay lost wages. However, the Board found no anti-union motive involved in the successor employer's refusal to hire the employee, and thereby refused to order the purchaser to reinstate the employee. The Board would not make an innocent purchaser remedy the unfair labour practices of the predecessor, where the purchaser had neither constructive notice of these unfair labour practices, nor were any complaints filed with the Labour Board at the time of the sale of which the purchaser could have had notice. (*Winchester Press*, [1982] OLRB Rep. Feb. 284).

#### **Board Recognizing that the Right of Trade Union Officials to Speak Publicly about Collective Bargaining Issues is Protected by the Act**

The grievor, the president of one of the complainant's locals, had made some remarks at a press conference regarding the adequacy of staffing in the respondent's facilities. This issue had previously been the subject of bargaining between the complainant and the respondent. The respondent filed a complaint with the College of Nurses alleging unprofessional conduct on the grounds that the statements made to the press by the grievor were untrue.

The complaint filed with the Board alleged that the respondent's actions in filing a complaint constituted illegal interference with the grievor's right to speak on union issues. After an extensive review of the authorities on employees' right of free speech in the context of collective bargaining, the Board held that employees do have a right to free speech which is



protected by the Act. The Board however declined to delineate the precise parameters of this right. The Board dismissed the complaint on the grounds that there was no anti-union motive underlying the employer's response to the grievor's exercise of her right. (*St. Catherine's General Hospital*, [1982] OLRB Rep. Mar. 441).

## **CONSTRUCTION INDUSTRY DECISIONS**

### **Union not Prevented from Prohibiting Assignment of Work to Owner/Operator not Covered by Provincial Agreement**

A clause in the provincial agreement for Operating Engineers set down two conditions for an owner/operator to perform work covered by that agreement. First, the owner/operator had to be signatory to an agreement with the union; second, the owner/operator had to be a member in good standing of the union and in good standing in contributing to its Health Plan, Pension Plan and working dues. Under the clause, the union was entitled to demand that an employer replace within 24 hours, any owner/operator who did not meet these conditions.

The union, exercising its right under this clause, caused the complainant to be replaced, because he did not have an agreement with the union. He subsequently made application for an agreement but the union continued to refuse to grant him one, thus depriving him of the right to work under that agreement.

The employee alleged that the union had acted contrary to sections 60, 60a, 61 and 136(1) [now sections 68, 69, 70 and 151(1)].

The Board held that the duty of fair representation is owed only to "employees in a bargaining unit" and therefore was not applicable in this case. On the facts the Board found that the union did not and did intend to represent owner/operators. The requirement of union membership and agreements were attempts to control the sub-contracting of bargaining unit work to owner/operators and protect the union's jurisdictional claim to bargaining unit work. The owner/operators were not covered by the provincial collective agreement.

Section 69 is applicable only where the union is engaged "*pursuant to a collective agreement*" in the selection, referral etc. of "*persons to employment*". Since the owner/operators were not employees within the meaning of the provincial agreement the requirement indicated by "*pursuant to a collective agreement*" had not been met.

There was no violation of section 70. The Board has held in the past that negotiation of typical subcontracting provisions restricting assignment of work to employers having a collective agreement with the union, does not violate any provision of the Act. What the union had negotiated here was similar, although it related to owner/operators rather than employers. (*Peter Walter Dow*, [1981] OLRB Rep. June 692).

### **Affiliated Bargaining Agent Restricted to Certification in ICI Sector for Employees who would be Subject to Provincial Agreement**

The Carpenter's Union applied to be certified for both carpenters and all other employees of the employer. The applicant requested the Board to find appropriate a craft unit of carpenters and a second unit of all other unrepresented trades at work on the application date. The Board noted that prior to the introduction of provincial bargaining legislation, the Board



would have acceded to the Union's request, by following its decision in *Duron Ontario Limited*. However, since the applicant was an affiliated bargaining agent, it was required to come under section 144 of the Act. The Board found that the only unit for which the applicant could obtain bargaining rights was a unit comprised of those employees who would be bound by the provincial agreement for carpenters. (*Clarence H. Graham Const.*, [1982] OLRB Rep. Sept. 1195).

#### **Agreement Signed as a Result of Threatened Unlawful Strike not Enforceable**

A trade union filed a grievance against the employer alleging a violation of the provincial agreement. The employer denied that the union held bargaining rights for it and claimed the grievance was not arbitrable. The union relied on an agreement entered into between the employer and the Toronto Building Trades Council, of which the union was a member as the basis for its bargaining rights. The Board was satisfied that the employer had signed the agreement with the Trades Council to put an end to unlawful strikes called against it by the Trades Council. The agreement therefore did not create bargaining rights and the union's grievance was dismissed. (*Traugott Construction Limited*, [1981] OLRB Rep. Nov. 1980).

#### **Craft Bargaining Unit Description Consistent with *Apprenticeship and Tradesmen Qualifications Act***

The applicant craft union requested certification with respect to a unit of sheet metal workers. The union asked the Board to describe the appropriate unit as referring to "journeymen sheet metal workers and registered sheet metal apprentices", because under the *Apprenticeship and Tradesmen's Qualification Act*, only journeymen sheet metal workers and registered apprentices can lawfully work at the trade. However, the employer had certain employees working within the trade who were neither journeymen sheet metal workers nor registered apprentices. The employer took the position that as these persons were working in the craft they should be included in the unit.

The Board held that the description of the craft unit should reflect the intent of the *Apprenticeship and Tradesmen's Qualification Act* and that employees who are not qualified to work in the trade should not be included in a sheet metal workers unit. (*Irvcon Roofing & Sheet Metal (Pembroke) Ltd.*, [1981] OLRB Rep. Nov. 1594).

#### **Sub-Contracting to a Non-Union Employer Primarily Engaged in Horticulture Violates Sub-Contracting Provision of Collective Agreement**

The collective agreement contained a clause limiting sub-contracting to union affiliated employers. The respondent, a construction industry employer, subcontracted some of its landscaping work to a non-union employer which was primarily engaged in horticultural work. Its employees were excluded from coverage of the *Labour Relations Act* pursuant to section 2(c) of the Act. The union grieved under section 124, and the parties referred the following three issues to the Board:

- (1) Whether horticultural work is included in the definition of "construction industry".
- (2) Whether horticulture is a lawful subject for collective bargaining and can be lawfully regulated by the collective agreement.

- (3) Whether on a section 124 grievance the Board is limited only to the powers of an arbitrator under a collective agreement.

The Board held that:

- (1) Horticulture and construction industry are not mutually exclusive terms. Where landscaping work is clearly part and parcel of new construction, the work is within the definition of construction industry, notwithstanding that it may also be horticulture.
- (2) Section 2(c) excludes from the Act only those employers whose primary business is horticulture. Thus the subcontractor could not be unionized since the Act did not apply to its employees. The primary business of the respondent (who is the party to the collective agreement) is *not* horticulture. The subcontractor's employees are performing the work in question, the agreement and the Act do not apply to its employees, but if the respondent's employees did that work the Act and the agreement would apply.

There is nothing unlawful about bargaining over horticultural work with an employer whose primary business is not horticulture, since the Act does not exclude horticultural work *per se*, or all employees doing such work. The question is whether the employer's business is primarily horticultural. It is lawful to protect work jurisdiction by regulating horticultural work, since horticultural work *per se* is not excluded. The Board therefore has jurisdiction under section 124 to hear the grievance.

- (3) The Board when sitting as arbitrator is not restricted to interpreting the collective agreement only. It can apply provisions of the *Labour Relations Act* in the process.

(*Jackson-Lewis Co. Ltd.*, [1981] OLRB Rep. Dec. 1794).

### **Duty of Fair Representation Owed to Members of Employer Bargaining Agency**

The complainant had been a member of the respondent, a designated employer bargaining agency. The complainant became dissatisfied with the activities of the respondent and indicated that it no longer wished to be a full member of the respondent. When the complainant began partial withholding of dues the respondent reacted by notifying the complainant that its membership was terminated and by refusing to notify the complainant of future bargaining meetings.

The Board held that the respondent was in violation of section 151(2) of the Act in failing to notify the complainant of bargaining meetings. The Board ordered the respondent to allow the complainant observer status on a bargaining subcommittee of the respondent. However the Board refused to order the respondent to allow the complainant full voting status. The Board pointed to section 72(5) and stated if the legislature had meant to give non-members the right to vote, it would have done so specifically. (*Mechanical Contractors Association of Ontario*, [1982] OLRB Rep. Mar. 417).

## PRACTICE DEVELOPMENTS

On August 25, 1981, the Board published two new Practice Notes, numbers 15 and 16. The full text of these Practice Notes may be found in the 1981 August Monthly Report, or in the office consolidation of the Board's Rules of Procedure.

Practice Note Number 15, relating to jurisdictional dispute complaints, sets out the pre-hearing conference procedure instituted by the Board. The Board has found that this procedure had reduced the length of hearings of jurisdictional dispute complaints and has led to the resolution of many of these complaints without a hearing.

The Board's practice of expediting unlawful strike and lock-out applications, as set out in Practice Note Number 16, has enabled the Board to act quickly and fairly in resolving explosive labour disputes. By having the hearing in the applications scheduled as soon as possible after filing, the parties have a deadline to work towards a settlement, often with the assistance of a Labour Relations Officer, knowing that if no settlement is reached, the dispute will be dealt with promptly at a Board hearing.

## VI COURT ACTIVITY

### *Baltimore Aircoil Interamerican Corporation*

**Ontario Divisional Court, Date of decision**

**July 7, 1981, Addendum to decision**

**July 10, 1981; (1981), 130 D.L.R. (3d) 580; 81 CLLC ¶ 14,130;**

**Court of Appeal, Date of Decision**

**December 16, 1981; 130 D.L.R. (3d) 580n**

This was an application for certification filed by the United Steelworkers of America, in support of which it filed evidence of membership on behalf of the 54 employees determined by the Board to be included in the bargaining unit. There was also filed a petition in opposition to the application signed by 26 employees including three who had earlier signed membership cards. Under normal circumstances, the existence of the petition would have caused the Board to direct the taking of a representation vote.

However, the Board also received a timely counter-petition signed by a number of employees, whereby they re-affirmed their membership and repudiated their signatures on the petition. Among those who signed this document were the three union members who had earlier joined the union and also had signed the petition.

The Board having satisfied itself that the counter-petition was voluntary disregarded the signatures of the three union members on the petition opposing the application. In the result, the Board declined to exercise its discretion to direct the taking of a representation vote, and certified the applicant trade union.

The employer applied for judicial review of the Board's decision. The Divisional Court held that the Board had committed a jurisdictional error by refusing to hear evidence as to the origination and circulation of the petition, because this evidence appeared relevant to its decision whether to exercise its discretion to direct the taking of a vote. The mere fact that the employees had first joined the union, then repudiated and finally repudiated the repudiation may have been sufficient evidence of confusion to justify the direction of a vote. The Court also thought it relevant that peer-pressure might have been an element in the creation of the counter-petition. The Court held that if these factors did not warrant the direction of a vote, at least the Board should have inquired into the petition to ensure the absence of such influences. In addition, the Court held that the refusal to hear the evidence was a denial of natural justice.

After receiving submissions from counsel on the appropriate disposition of the matter, the Court directed that the application for certification be remitted to another panel of the Board for consideration de novo in the light of the Court's decision.

The Court of Appeal dismissed an appeal from the decision of the Divisional Court by decision dated December 16, 1981 supporting the Divisional Court's finding of a denial of natural justice. At the end of the year under review an application for leave to appeal the matter to the Supreme Court of Canada was pending.



***Operative Plasterers' and Cement Mason's, Local 124,  
Labourer's International, Local 527 and Duron Ottawa et al***  
**Ontario Divisional Court, Date of Decision**  
**July 14, 1981; Unreported**

An application by the Operative Plasterers for a stay of the Board's order was dismissed. The Court was unwilling to consider the application because the applicant had not taken any steps to perfect its application for judicial review. The judicial review application was pending at the end of the year.

***Marche Lalonde***  
**Ontario Divisional Court, Date of Decision**  
**August 25, 1981; Unreported**

The Board had certified the trade union with respect to employees of the applicant employer. The employer sought judicial review of the Board decision on the grounds of denial of natural justice. Specifically, it was alleged that the English-French interpreter provided by the Board at the hearing was not competent and that this prejudiced the employer's case.

Prior to the hearing before the Divisional Court, the Board had advised the parties that it was prepared to afford a new hearing before the Board with adequate interpretation services. At the hearing before the Court, the employer, the union and the Board consented to an order remitting the matter back to the Board.

***Canada Cement Lafarge Ltd.***  
**Ontario Divisional Court, Date of Decision**  
**October 26, 1981; 82 CLLC ¶ 14,152**

This application for judicial review arose out of the Board's disposition of cross-complaints filed by the union and the employer, alleging unfair labour practices. The Board dismissed all of the complaints filed by the union and all of those filed by the employer except for one alleging that the union had breached the duty to bargain in good faith by refusing to sign a collective agreement, despite a majority vote in favour of the employer's final offer at a supervised vote directed by the Minister. The Board rejected the union's argument that the legislation did not intend such a vote to be binding, but that it was intended to be a mere opinion poll without legal significance. The Board held that the result of the vote, except in extraordinary circumstances, is binding. On the evidence, it was held that certain alleged statements made by the employer could not be viewed as an unlawful threat under the Act or as undermining the reliability of the vote.

The Court, noting that the Board's decision was reached after a thorough analysis of the evidence and the submissions of the parties, held that the interpretation placed by the Board on section 34e [now section 40] was not so patently unreasonable as to warrant the Court's intervention. The application for judicial review filed by the union was dismissed.

***Oakwood Park Lodge***  
**Ontario Divisional Court, Date of Decision**  
**November 3, 1981; Unreported**

This was an application for judicial review of a Board decision which held that the Union was not precluded from arguing that certain persons were “employees” within the meaning of the *Labour Relations Act*. The applicant relied on a previous decision of the Board, where the persons were found to be employed in a managerial capacity and hence not employees. It was contended that the Board was bound by this earlier decision and therefore should dismiss the Union’s certification application.

The application for judicial review was dismissed. The Court pointed out that the Board is not bound to follow its previous decisions and that the extent to which it chooses to do so any given case is clearly a matter within its own jurisdiction.

***Fanshawe College***  
**Supreme Court of Ontario, London Motions Court,**  
**Date of Decision**  
**November 12, 1981; Unreported**

The grievor in this matter filed an unfair labour practice complaint through his trade union alleging that he had been discharged because he had exercised rights under the *Colleges Collective Bargaining Act*. The complaint was dismissed by the Board, it being found that the grievor’s discharge was not because of his exercise of statutory rights. Subsequently, the grievor filed another unfair labour practice complaint, this time on his own behalf. In the second complaint, he sought to allege that the impugned employer conduct was in breach of additional sections of the Act. The Board dismissed this complaint as well, holding that the allegations could and should properly have been raised in the first complaint. The Board held that the fact that the second complaint was filed by the grievor in his own name, while the first was filed by the union on his behalf, did not preclude the application of a doctrine analogous to *res judicata*.

The grievor made application by way of originating notice of motion for a declaration of his rights under the *Colleges Collective Bargaining Act*. The Court dismissed the application, holding that this was a matter that might be the subject of an application for judicial review and that it had no jurisdiction in Motions Court to deal with the matter when the facts giving rise to the matter were disputed.

***Royal Canadian Yacht Club; Canada Sand Papers Ltd.***  
**Ontario Divisional Court, Date of Decision**  
**December 11, 1981; (1981), 129 D.L.R. (3d) 554**

The two applications for judicial review of two similar Board decisions were argued before the Divisional Court at the same time. The applicants contended that in certifying the trade unions the Board had committed an error of the kind that is reversible in judicial review. It was alleged that the Board erred by failing to consider the “statement of desire” as part of the evidence in determining under section 7(1) of the *Labour Relations Act* the number of employees in the bargaining unit who were members of the trade union at the terminal date fixed by the Board. It was argued that a “statement of desire” was tantamount to a notice of

resignation from the union and ought to have been considered in determining the degree of membership support enjoyed by the union at the material time. The Board did not consider the statement of desire relevant to the question of membership, but only relevant in determining whether the Board ought to exercise its discretion to order a representation vote.

The Court held that while the Board is obliged to consider all the evidence that is relevant to membership in determining the degree of membership support enjoyed by the union, the Board determined in these cases that the statements of desire did not bear directly on membership. The Board did what the definition of “member” called for, namely ascertain the number of employees that “had applied for membership in the union . . . and had paid to the trade union on his own behalf an amount of at least one dollar in respect of the initiation fees or monthly dues of the trade union.”

The Court held that in the circumstances the Board’s procedure cannot be said to be patently unreasonable. Both applications were dismissed.

An application for leave to appeal the decision of the Divisional Court was denied by the Court of Appeal.

***Ajax and Pickering General Hospital***

**Ontario Court of Appeal, Date of Decision**

**June 29th, 1981; Unreported**

**Date of Decision December 22nd, 1981, (1981), 35 O.R. (2d) 293;**

**132 D.L.R. (3d) 270; Supreme Court of Canada,**

**Date of Decision March 15, 1982, 132 D.L.R. (3d) 270<sup>n</sup>**

The applicant hospitals obtained a cease and desist order from the Board against C.U.P.E., some of its locals and certain of its officials in relation to an unlawful strike which was filed in the Supreme Court of Ontario for enforcement pursuant to section 83<sup>a</sup> [now 94] of the *Labour Relations Act*. The applicants alleged that the respondent union and its officials violated the Board’s order and subsequently moved in the Supreme Court of Ontario to compel compliance with the order through contempt of court proceedings. At the hearing of the application, the respondents objected to the jurisdiction of the Court to entertain the matter since the order was being complied with. The Court sustained the respondents’ objection, (1981) 32 O.R. (2d) 492; 122 D.L.R. (3d) 108, and the applicants appealed.

The Board was not a party to the contempt application, but moved before the Court of Appeal and obtained its leave on June 29th, 1981 to intervene in the hearing of the appeal.

A majority decision of the Court of Appeal allowed the appeal and held that orders of the Board, once filed in the Court, are enforceable as court orders. Thus, persons disobeying Board orders after they are filed in the Court are subject to punishment through contempt proceedings in the same way as persons who violate Court orders. The Court has the jurisdiction to deal with an application to punish for contempt if the order has been violated notwithstanding that there has been compliance at the time of the hearing, although compliance is relevant in determining what punishment, if any, is appropriate.

The respondents were refused leave to appeal the Court of Appeal’s decision by the Supreme Court of Canada.



***Ontario Sheet Metal and Air Handling Group***  
**Ontario Divisional Court, Date of Decision**  
**January 13, 1982; Unreported**

This application for judicial review was from a Board decision in a construction industry grievance referred to it. The applicant trade union alleged, *inter alia*, that the Board had committed errors of law and jurisdiction by interpreting the collective agreement in a manner that was patently unreasonable and not supportable by law and by failing to ask itself the proper question to be resolved by the arbitration.

In a brief endorsement dismissing the application, the Court determined that it was unnecessary for it to decide in this case whether the Board sitting as an arbitrator under section 112a [now section 124] of the *Labour Relations Act* is protected by the privative clause in the Act. In interpreting the collective agreement, the Board had not purported to amend it and did not commit any jurisdictional error. It gave the agreement an interpretation that it could reasonably bear.

***Dominion Bridge Company Limited***  
**Ontario Divisional Court, Date of Decision**  
**February 18, 1982; Unreported**

This was an application for judicial review from a Board decision holding that it would entertain an unfair labour practice complaint. The complainant was an employee, who was terminated shortly after being promoted from the bargaining unit to a managerial position. The complaint alleged that he was terminated because of his exercise of rights under the *Labour Relations Act* and that for the same reason, his request to return to the bargaining unit was also refused. The Board held that at the time of dismissal the complainant was employed in a managerial capacity and hence not entitled to the protections afforded by section 58(a) [now section 66(a)] of the Act. However, the Board held that when the complainant sought to return to his former job in the bargaining unit after his termination, he was in the same position as a person seeking employment. Therefore, if the complainant was not permitted to return to his employment at the plant because of his previous lawful union activity, he was entitled to protection. The Board was prepared to entertain that part of the complaint alleging the unlawful refusal to return him to his previous position.

The applicant contended that in reaching that decision the Board has misapplied judicial authority and had erroneously extended the meaning and application of 58(a), [now 66(a)] thereby conferring upon itself a jurisdiction which it otherwise did not have.

The Court held that while the dismissal of the complainant was a single act, once he was terminated he was in the same position as any other person seeking employment. He applied to be re-hired and in doing so, he was entitled to the protection of section 58(a). The application for judicial review was dismissed.



***Wells Fargo Armcar Inc.*****Ontario Divisional Court, Date of Decision****Jan. 22, 1982; 13 A.C.W.S. (2d) 42 March 15, 1982; (1982), 36 O.R. (2d) 361;****Supreme Court of Ontario Toronto Motions Court,****Date of Decision Sept. 9, 1981; (1982), 34 O.R. (2d) 99**

In this case the Board had certified Local 419 of the Teamsters Union to represent a group of employees of the applicant employer. At issue was the meaning of section 12 of the *Labour Relations Act*, which prohibits the inclusion of guards in a bargaining unit represented by a union that does, or is affiliated with a union that does, represent persons other than guards. The Board held the employees were not guards on the basis that there functions did not create a conflict of interest with other employees of the employer.

The employer applied under section 6(2) of the *Judicial Review Procedure Act* for leave to apply for a speedy judicial review hearing before a judge of the High Court. Leave was denied on the grounds that no urgency was established and that there was no evidence that the delay involved in proceeding before the Divisional Court would result in a failure of justice. Subsequently by decision dated January 22, 1982, an application for a stay of the Board's order was dismissed by the Divisional Court.

On the application for judicial review before the Divisional Court, the issue was the propriety of the Board's use of the "conflict test" in determining whether the employees were "guards" within the meaning of the Act. The applicant contended that the requirement of conflict was an extraneous factor not required by the Act and that by asking that irrelevant question, the Board had exceeded its jurisdiction.

The Court stated that since the Act contained no definition of the term "guard", it was not unreasonable for the Board to apply a test which was compatible with the intent of section 12. The application was dismissed.

***Inducon Development Corporation*****Supreme Court of Ontario****Toronto Motions Court, Date of Decision****March 25, 1982; 14 A.C.W.S. (2d) 48**

The applicant moved by way of judicial review before a single judge of the High Court seeking to quash a Board decision declaring that the applicant was a related employer and was therefore bound by a collective agreement with the Carpenter's Union. Although the application was dismissed, and was transferred to the Divisional Court, the Court, on its own motion, stayed all proceedings consequent upon the Board's decision. As of the end of the year under review, leave to appeal the decision granting the stay was pending.

## VII CASELOAD

During the fiscal year, the Board received a total of 2,749 applications and complaints, a decrease of 87 cases (3 per cent) below the intake of 2,836 cases in 1980-81. Most of the decrease, 65 cases, occurred in filings of complaints of contravention of the Act and referrals of grievances under construction industry collective agreements (Tables 1 and 2). In addition, 449 cases were carried over from previous year, making a total caseload of 3,198 in 1981-82. Of this total, 2,608 (82 per cent) were disposed of, the same proportion of caseload disposed of in 1980-81. Of the remaining cases, proceedings in 163 were adjourned sine die\* (without a fixed date for further action) at the request of the parties and 427 were pending in various stages of processing at March 31, 1982.

The total number of cases processed during the year produced an average workload of 355 cases for the board's full-time chairman and vice-chairmen and the total dispositions represented an average output of 290 cases.

### Labour Relations Officer Activity

In 1981-82, labour relations officers were assigned a total of 1,552 cases to assist the parties involved (Table 3). The number comprised 49 per cent of the Board's total caseload, and included 314 certification applications, 57 cases relating to the status of employees, 607 complaints of contravention of the Act, 544 grievances under construction industry collective agreements, and 30 complaints under the *Occupational Health and Safety Act*. Officer activity was completed in 1,260 cases, with settlements reached in 1071 cases (85 per cent); with adjournments sine die in 102 cases; and with activity continuing in the remaining 190 cases at the end of the year.

In addition, labour relations officers were successful in having the parties waive the hearing in 211 (79 per cent) of 267 certification applications assigned, and in settling disputes on the bargaining unit in another 197 cases (68 per cent) of 288 cases assigned at the hearing.

Table 4 provides statistics on settlements obtained by labour relations officers in cases disposed of in 1981-82, in which the officers played the primary role in the processing of the case, as opposed to cases in which new assignments were made during the year. The table shows that the officers achieved an overall settlement rate of 79 per cent of the total 1,237 cases involved. By type of case the settlement rate was 82 per cent for construction industry grievances, 79 per cent for complaints of contravention of the Act, 70 per cent for employee status cases, and 63 per cent for complaints under The Occupational Health and Safety Act.

### Representation Votes

Returning officers conducted and counted the results of 236 votes held among employees in one or more bargaining units in 222 cases which were either disposed of during the year or in which a final decision closing the case had not been issued by the board by March 31, 1982. Of the total votes, 193 involved certification applications, 42 were held in termination of

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\*The Board regards sine die cases as disposed of although they are kept on docket for one year.

bargaining rights cases, and one in a successor employer case (Table 5). A total of 15,808 employees were eligible to participate in the 236 votes and 13,463 (85 per cent) of them cast their ballots. Of the 13,463 employees who voted, 49 per cent cast ballots in favour of the applicant unions.

Seventy-nine per cent, or 152 of the votes held in the certification applications involved a single union, 38 involved two unions and two involved three unions. All, except three of the votes involving more than one union, entailed attempts to replace an incumbent bargaining agent. The three exceptions involved two unions seeking to represent the same employees in collective bargaining for the first time.

### **Hearings**

The Board held a total of 1,270 hearings and continuation of hearings in 1,801 of the 3,198 cases processed during the fiscal year, a decrease of 650 sittings from the number held in 1980-81. One hundred and three of the hearings were conducted by vice-chairmen alone, compared to 113 hearings in 1980-81.

### **Processing Time**

Table 7 provides statistics on the time taken to process the 2,608 cases disposed of by the Board in 1981-82. Information is provided separately for the three major groups of cases handled by the Board: certification applications, complaints of contravention of the Act and referrals of grievances under construction industry collective agreements.

A median time of 28 calendar days was taken to process the 2,608 cases completed from receipt to disposition, a decrease of 4 days from the median time for 1980-81. Certification applications involved 29 days, compared to 34 days in 1980-81; complaints of contravention of the Act required 31 days, compared to 34 days; referrals of construction industry grievances took 18 days, compared to 21 days; but the median time for all other types of cases increased to 62 days from 49 days in 1980-81. Eighty per cent of all cases were disposed of in 84 days (three months or less), compared to 84 per cent for certification applications, 80 per cent for complaints of contravention of the Act, 85 per cent for referrals of construction industry grievances and 63 per cent for all other cases. Nine per cent of all cases required more than 168 days (six months) to complete, compared to eight per cent or slightly more for the three major groups of cases and 14 per cent for all other types.

### **Adjournments**

In November, 1981, the Board decided to conduct a study to determine the incidence of cases where adjournments on consent of the parties had occurred and the time lapse involved between the date originally set for hearing and the date on which the hearing actually was held.

The following table illustrates the number of cases in each month where hearings were adjourned and the total delay they caused.



### Adjournment on Consent

Month	Total Cases Involved	Total Delay (In Weeks)
November 1981	27	81
December 1981	55	166
January 1982	13	22½
February 1982	27	45½
March 1982	31	90
Overall total	153	405

As a result of this study, the Board has decided to monitor these adjournments on consent on a continuing basis and report the results in our Annual Report.

### Certification of Bargaining Agents

Applications for certification of trade unions as bargaining agents of employees constitute the largest group of the cases brought to the Board. The proportion of these applications to the total number of cases received has, however, declined steadily since 1975-76, from 58 per cent to 40 per cent in 1981-82 (Table 2).

In 1981-82, the Board received 1,089 certification applications, 63 cases less than in 1980-81 (Tables 1 and 2). The applications were filed by 86 trade unions, including 27 employee associations (Table 8). Seven of the unions, however, accounted for 65 per cent of the total certification applications: The Labourers (154 cases), Carpenters (132 cases), Public Employees (CUPE) (89 cases), Service Employees International (71 cases), Steelworkers (61 cases), Teamsters (63 cases) and Food and Commercial Workers (53 cases). In contrast, 56 per cent of the unions filed fewer than five applications each, with the majority making only one application. These unions together accounted for only eight per cent of the total certification filings.

Table 9 gives the industrial distribution of the intake of certification applications for the year. Non-manufacturing establishments accounted for 79 per cent of the intake, concentrated in construction (350 cases), health and welfare services (155 cases), retail trade (59 cases), and accommodation and food services (51 cases). These four industries comprised 71 per cent of the total non-manufacturing applications. Of the 224 applications involving establishments in manufacturing industries, 35 per cent were in metal fabricating (36 cases), food and beverage (22 cases) and printing and publishing (21 cases).

In addition to the applications received, 154 cases were carried over from the previous year, making a total certification caseload of 1,243. Of this total, 1,101 were disposed of, 11 were adjourned sine die, and the remaining 131 were pending at March 31, 1982. Of the 1,101 dispositions, certification was granted in 716 cases, including 50 in which interim certificates were issued under section 6(2) of the Act, and four that were certified under section 8; 214 cases were dismissed; proceedings were terminated in 9 and 162 were withdrawn. The certified applications represented 65 per cent of the total dispositions, compared to 70 per cent in 1980-81.



In 167 applications that were either certified or dismissed, final decisions were based on the results of representation votes (Table 6). Of the 176 votes conducted, 136 involved a single union, 39 were held between one or two applicant unions and an incumbent bargaining agent, and one involved three applicant unions. The applicant won in 80 of the votes and lost in 96. A total of 13,290 employees was eligible to participate in the vote, and 11,302 (85 per cent) of them cast ballots. In the 80 votes that were won and resulted in certification 4,719 (93 per cent) of the 5,662 employees eligible to vote cast ballots, and of those who voted, 3,345 (71 per cent) favoured the applicant unions. In the 96 elections that were lost and resulted in dismissal, 6,583 (86 per cent) of the eligible employees participated in the vote, and of the participants 2,341 (36 per cent) voted in favour of the applicant unions.

Small bargaining units were again the predominant pattern of union organizing efforts through the certification process. The average size of the unit in the 716 applications that were certified in 1981-82 was 28 employees, compared to 30 employees in 1980-81 (Table 10). Units in construction certifications averaged seven employees, compared to six employees in 1980-81; and those in non-construction certifications averaged 36 employees, compared to 37 employees in 1980-81. Eighty-one per cent of the total certifications, including all except one in construction, involved units of fewer than 40 employees, and 43 per cent applied to units of fewer than ten employees. The total number of employees covered by the 716 certified applications dropped to 20,031 from 24,685 in 1980-81.

Substantial improvement occurred over the previous year in the time taken by the Board to process the applications in which certification was granted. As Table 11 shows, a median time of 25 calendar days was required to complete the 716 certified applications from receipt to disposition, compared to 31 days in 1980-81. For non-construction certifications the median time was 26 days, compared to 33 days in 1980-81; and for construction certifications the median time was 20 days, compared to 21 days last year. Ninety-one per cent of the 1981-82 certified cases took 84 days (three months or less) to process from receipt to disposition, 86 per cent took 56 days (two months or less), 65 per cent took 28 days (one month or less), and 40 per cent required 21 days (three weeks or less). Only 26 cases took longer than 168 days (six months) to process, compared to 50 cases in 1980-81.

### **Termination of Bargaining Rights**

The Board received 98 applications during the fiscal year under sections 57, 59, 60, 61 and 124 of the Act, seeking termination of the bargaining rights of trade unions, a decrease of 6 cases below the number filed in 1980-81. In addition, 12 cases were carried over from last year. Of the 110 total, bargaining rights were terminated by the Board in 24 cases, 29 cases were dismissed, and 7 cases were withdrawn. Thirty-two cases were pending at the close of the year. Unions lost the right to represent 1,059 employees in 42 cases in which termination was granted but retained that right for 955 employees in the 36 cases that were either dismissed or withdrawn.

Of the 71 cases that were either granted or dismissed, dispositions in 40 cases (56 per cent) were based on the results of representation votes, compared to 43 per cent of such cases in 1980-81. A total of 1,329 employees was eligible to participate in the 40 votes that were held, of whom 1,144 (86 per cent) cast ballots (Table 6). In the 41 votes held in last year's cases, 88 per cent of the 943 employees eligible to vote participated.

### **Declaration of Successor Trade Union**

In 1981-82, the Board dealt with 11 applications under section 62 of the Act, concerning the bargaining rights of a successor trade union resulting from a union merger situation, compared to 25 cases in 1980-81. Affirmative declarations were issued by the board in three cases, one case was dismissed, one was withdrawn, and the remaining six were pending at March 31, 1982.

### **Declaration of Successor or Common Employer**

The Board dealt with 92 applications for declarations under section 63 of the Act on the bargaining rights of a trade union at a successor employer resulting from a business sale, or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the board in 17 cases, including one in which a representation vote was held; 30 cases were either settled or withdrawn by the parties; 13 cases were dismissed. Of the remaining cases, 9 were adjourned sine die, and 23 were pending at the end of the year. In the one case involving a representation vote, all of the 112 employees who were eligible to vote participated (Table 6).

### **Accreditation of Employer Organizations**

Two applications were processed under sections 125 through 127 of the Act for accreditation of the employer organizations as bargaining agents of employers in the construction industry. Both were pending at March 31, 1982.

### **Declaration and Direction of Unlawful Strike**

In 1981-82, the Board dealt with 58 applications seeking declarations or directions under section 92 of the Act against alleged unlawful strikes in non-construction industries. Directions were issued in 16 cases, one case was dismissed, and 13 cases were withdrawn. Of the remaining cases, two were settled, 25 were adjourned sine die and one was pending at March 31, 1982.

Thirty-four applications were also processed during the year seeking directions under section 135 of the Act against alleged unlawful strikes affecting the construction industry. A direction was issued in eight cases, eight were withdrawn, seventeen were adjourned sine die and one was pending at the end of the year.

### **Declaration and Direction of Unlawful Lock-Out**

Seven applications processed during the year sought declarations or directions by the Board under section 93 of the Act against alleged unlawful lock-outs by non-construction employees. One case was dismissed, one case was withdrawn, three were settled, one adjourned sine die, and one was pending at year end.

### **Consent to Prosecute**

In 1981-82, the Board received 18 applications under section 101 of the Act, requesting consent to institute prosecution in the Provincial Court against trade unions and employers for

commission of an offence under the Act. The number of these applications has declined considerably since 1975 with the expansion of the Board's remedial authority under section 89 of the Act. Many applications which were filed under section 101 prior to 1975, particularly those alleging failure to bargain in good faith, are now made under section 89.

Of the 18 applications processed, which included one carried over from the previous year, 10 were disposed of, five were adjourned sine die and three were pending at March 31, 1982. Of the cases disposed of, consent to prosecute was granted by the Board in one case, consent was denied in one case, three cases were withdrawn and five cases were settled.

### **Complaints of Contravention of the Act**

Complaints filed under section 89 of the Act alleging contravention of the Act form the second largest group of cases processed by the Board. The number of these cases has increased substantially since 1975 (Table 2). In these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

In 1981-82, the Board received 640 section 89 complaints, an increase of 9 per cent over the number in 1980-81. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees (sections 64 and 66 of the Act), illegal changes in wages and working conditions (section 79), and failure to bargain in good faith (section 15), and were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly (section 68) in grievances under a collective agreement.

In addition to the complaints received, 112 cases were carried over from 1980-81, and five were filed under section 78 of the *Colleges Collective Bargaining Act*. Of the 752 total, 622 were disposed of, 29 were adjourned sine die and 101 were pending at March 31, 1982. In 490 (79 per cent) of the case disposed of, voluntary settlements including withdrawal of the complaint in 65 cases, were secured by labour relations officers, remedial orders were issued by the Board in 47 cases, 73 cases were dismissed by the Board and proceedings were terminated in the remaining 12.

In the settlements secured by labour relations officers, specific compensation amounting to more than \$238,500 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 47 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay specific compensation to 7 employees totalling \$28,198, and full compensation to another 256 employees for all wages and benefits lost within a period of time. Two hundred and forty of the 263 employees were also ordered reinstated, as well as 5 other employees for whom a monetary remedy was not awarded. In addition, employers in 33 cases were ordered to post a Board notice of the employees' rights under the Act, and the Board issued cease and desist directions in eight cases.

### **Construction Industry Grievances**

Grievances over alleged violations of provisions of collective agreements in the construction industry may be referred to the Board for resolution under section 124 of the Act. These referrals comprise the third largest group of cases handled by the Board. As with complaints of contravention of the Act, the Board emphasizes voluntary settlements of these cases by the parties, with the assistance of labour relations officers.



In 1981-82, the Board received 551 cases under section 124, an increase of 7 per cent over the number in 1980-81. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and deduction of union dues, and violation of the sub-contracting and hiring arrangements established by the collective agreement.

In addition to the grievances received, 100 cases were carried over from 1980-81. Of the total, 516 were disposed of, 60 were adjourned sine die and 75 were pending at March 31, 1982. In 422 (82 per cent) of the cases disposed of, voluntary settlements including withdrawal of the grievance in 64 cases, were secured by labour relations officers, awards were made by the Board in 46 cases, 38 cases were dismissed and proceedings were terminated in 10 cases. Specified payments totalling in excess of \$660,900 were recovered for unions and employees in both the cases settled by labour relations officers and those in which Board awards were made.

### **Miscellaneous Applications and Complaints**

#### **Rights of Access**

One application was received during the year in which the union sought access to the employer's property under section 11 of the Act. The case was settled by the parties.

#### **Religious Exemption**

Nineteen applications were received in 1981-82 under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemption was granted in 5 of the cases, ten cases were dismissed, and three were pending at March 31, 1982.

#### **Early Termination of Collective Agreements**

Twenty-nine applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 27 cases, one case was dismissed, and one case was pending at March 31, 1982.

#### **Union Financial Statements**

Nine complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements on the union's affairs. One case was dismissed, proceedings were terminated in six cases, one case was withdrawn and one was settled.

#### **Jurisdictional Disputes**

Forty-five complaints were dealt with by the Board under section 91 of the Act during the fiscal year, involving union work jurisdiction. An assignment of the work in dispute was made by the Board in one case, three cases were dismissed, proceedings were terminated in three cases, twelve cases were withdrawn, and two settled. Four cases were adjourned sine die and twenty were pending at March 31, 1982.



## **Determination of Employee Status**

The Board dealt with 93 applications under section 106 of the Act, seeking decisions on the status under collective agreements of employees in occupational classifications that were changed or newly established. Five of the cases were filed under section 82 of the *Colleges Collective Bargaining Act*. Forty-one of the cases, including 23 withdrawals, were settled by the parties in discussions with labour relations officers. Determinations were made by the Board in 20 cases, in which 12 of the 44 employees in dispute were found to be employees under the Act and 32 were found not to be employees. Twenty-one cases were settled by the parties, 23 were withdrawn, proceedings were terminated in 4 cases, 21 cases were adjourned sine die, and 16 cases were pending at March 31, 1982.

## **Referrals by the Minister of Labour**

In 1981-82, the Board dealt with 14 cases referred by the Minister under section 107 of the Act for opinions on questions relating to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under section 44 or 45. Determinations were made in two cases in which the Board declared the Minister's authority to appoint a conciliation officer, one case was settled by the parties, proceedings were terminated in one case, one case withdrawn, three adjourned sine die, and six cases were pending at March 31, 1982.

## **Trusteeship Reports**

Four statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

## **Occupational Health and Safety Act**

In 1981-82, the Board received 30 complaints under section 24 of the *Occupational Health and Safety Act*, alleging wrongful discipline or discharge of employees for acting in compliance with this Act. Forty of such cases were received in 1980-81. In addition to the cases received in 1981-82, 13 were carried over from 1980-82.

Of the total processed, 22 (including four in which the complaint was withdrawn) were settled by the parties in discussions with labour relations officers, nine were dismissed by the board, two granted, and proceedings were terminated in two cases. Of the remaining eight, three were adjourned sine die and five were pending at March 31, 1982.

## **Colleges Collective Bargaining Act**

In 1981-82, the Board dealt with five complaints brought under section 78 of the *Colleges Collective Bargaining Act*, alleging contravention of this Act. Two cases were settled with the assistance of a labour relations officer, two were dismissed, and one was withdrawn.

Five applications were dealt with under section 82 of the Act for decisions on the status of employees under a collective agreement. Three cases were settled with the assistance of a labour relations officer; in one case the Board determined that the 17 employees involved were not included in the bargaining unit; and one case was pending at March 31, 1982.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt by the Board are included in Table 1.

## VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

*The Ontario Labour Relations Board Report*, a monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

*A Guide to the Ontario Labour Relations Act*, a booklet explaining in laymen's terms the provisions of the *Labour Relations Act* and the Board's practices. The Guide was extensively revised during the past year to reflect current Board practices.

*Rules of Procedure, Regulations and Practice Notes* (Queen's Printer), a consolidation of the Rules of Procedure and Regulations enacted under the *Labour Relations Act* and containing all of the Board's practice notes.

During this year the Board published two pamphlets entitled "Certification by the Ontario Labour Relations Board" and "The Rights of Employees, Employers and Trade Unions"; with the view to providing more information to the public and making the Board more accessible, the Board is undertaking the production of additional pamphlets in the future.

## **IX       STAFF AND BUDGET**

At the end of the fiscal year 1981-82, the Board employed a total of 99 persons on a full time basis. The Board has two types of employees. The Chairman, Alternate-Chairman, Vice-Chairmen and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$3,874,000.00.

## X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1981-82.

- Table 1: Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1981-82.
- Table 2: Applications and Complaints Received and Disposed of, Fiscal Years 1977-78 to 1981-82.
- Table 3: Labour Relations Officer Case Activity, Fiscal Year 1981-82.
- Table 4: Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1981-82.
- Table 5: Results of All Representation Votes Conducted, Fiscal Year 1981-82.
- Table 6: Results of Representation Votes in Cases Disposed of, Fiscal Year 1981-82.
- Table 7: Time Required to Process Applications and Complaints Disposed of, Fiscal Year 1981-82.
- Table 8: Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1981-82.
- Table 9: Industry Distribution of Certification Applications Received and Disposed of, Fiscal Year 1981-82.
- Table 10: Size of Bargaining Units in Certification Applications Granted, Fiscal Year 1981-82.
- Table 11: Time Required to Process Certification Applications Granted, Fiscal Year 1981-82.



**Table 1**  
**Total Applications and Complaints Received, Disposed of and Pending**  
**Fiscal Year 1981-82**

Type of Case	Caseload			Disposed of Fiscal Year 1981-82							
	Total	Pending April 1, 81	Received Fiscal Year 1981-82	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die	Pending March 31, 82
Total	3,198	449	2,749	2,608	934	402	47	379	846	163	427
Certification of Bargaining Agents	1,243	154	1,089	1,101	716	214	9	162	—	11	131
Declaration of Termination of Bargaining Rights	110	12	98	78	42	29	—	7	—	—	32
Declaration of Successor Trade Union	11	1	10	5	3	1	—	1	—	—	6
Declaration of Successor Employer or Common Employer Status	92	16	76	60	17	13	—	22	8	9	23
Accreditation	2	1	1	—	—	—	—	—	—	—	2
Declaration of Unlawful Strike	3	—	3	2	1	—	—	—	1	1	—
Declaration of Unlawful Lockout	2	1	1	1	—	1	—	—	—	1	—
Direction respecting Unlawful Strike	55	1	54	30	15	1	—	13	1	24	1
Direction respecting Unlawful Lockout	5	—	5	4	—	—	—	1	3	—	1
Consent to Prosecute	18	1	17	10	1	1	—	3	5	5	3
Contravention of Act	752	112	640	622	47	73	12	65	425	29	101
Right to Access	1	—	1	1	—	—	—	—	1	—	—
Exemption from Union Security Provision in Collective Agreement	19	—	19	16	5	10	—	—	1	—	3
Early Termination of Collective Agreement	29	1	28	28	27	1	—	—	—	—	1
Trade Union Financial Statement	9	5	4	9	—	1	6	1	1	—	—
Jurisdictional Dispute	45	9	36	21	1	3	3	12	2	4	20
Referral on Employee Status	93	21	72	64	9	7	4	23	21	21	16
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	14	1	13	5	2	—	1	1	1	3	6
Referral of Construction Industry Grievance	651	100	551	516	46	38	10	64	358	60	75
Referral from Minister on Construction Bargain- ing Agency	1	—	1	—	—	—	—	—	—	—	1
Complaint under <i>Occupational Health and Safety Act</i>	43	13	30	35	2	9	2	4	18	3	5

\* Includes cases in which a request was granted or a determination made by the Board.

Table 2

**Applications and Complaints Received and Disposed of  
Fiscal Years 1977-78 to 1981-82**

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1977-78	1978-79	1979-80	1980-81	1981-82	Total	1977-78	1978-79	1979-80	1980-81	1981-82
<b>Total</b>	<b>12,281</b>	<b>2,035</b>	<b>2,179</b>	<b>2,482</b>	<b>2,836</b>	<b>2,749</b>	<b>11,395</b>	<b>1,757</b>	<b>2,071</b>	<b>2,248</b>	<b>2,711</b>	<b>2,608</b>
Certification of Bargain- ing Agents	5,343	947	1,019	1,136	1,152	1,089	5,294	890	1,022	1,103	1,178	1,101
Declaration of Termination of Bargaining Rights	465	78	115	70	104	98	451	80	110	72	111	78
Declaration of Successor Trade Union or Employer	280	51	74	50	55	50	260	55	61	55	54	35
Declaration of Common Employer Status	142	17	22	30	37	36	119	6	26	28	29	30
Accreditation	9	3	—	3	2	1	11	2	1	3	5	—
Declaration of Unlawful Strike or Lockout	49	15	9	15	6	4	45	12	12	11	7	3
Directions Respecting Unlawful Strike or Lock-Out	370	73	84	78	76	59	246	52	62	51	47	34
Consent to Prosecute	211	67	57	48	22	17	180	45	52	50	23	10
Contravention of Act	2,812	406	454	607	705	640	2,592	342	402	522	704	622
Referral of Construction Industry Grievance	1,891	264	238	321	517	551	1,565	198	203	227	421	516
Miscellaneous	709	114	107	124	160	204	632	75	120	126	132	179

**Table 3**
**Labour Relations Officer Case Activity**  
**Fiscal Year 1981-82**

<b>Type of Case</b>	<b>Total Cases Assigned</b>	<b>Number of Cases in Which Activity</b>		
		<b>Completed</b>	<b>Pending</b>	<b>Sine Die</b>
<b>Total</b>	<b>1,552</b>	<b>1,260</b>	<b>190</b>	<b>102</b>
Certification				
Interim certificate	50	34	4	12
Pre-hearing application	117	83	34	—
Other application	147	142	5	—
Contravention of Act	607	504	77	26
Construction industry grievance	544	436	56	52
Employee status	57	38	10	9
Occupational Health and Safety Act	30	23	5	2

**Table 4****Labour Relations Officer Settlements in Cases Disposed of\***  
**Fiscal Year 1981-82**

<b>Type of Case</b>	<b>Total Disposed of</b>	<b>Officer Settlements</b>	
		<b>Number</b>	<b>Percent of Dispositions</b>
<b>Total</b>	<b>1,237</b>	<b>979</b>	<b>79.1</b>
Contravention of Act	622	490	78.8
Construction Industry Grievance	516	422	81.8
Employee Status	64	45	70.3
Occupational Health and Safety Act	35	22	62.9

\* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.



**Table 5**
**Results of Representation Votes Conducted\***  
**Fiscal Year 1981-82**

<b>Type of Case</b>	<b>Number of Votes</b>	<b>Eligible Employees</b>	<b>Ballots Cast</b>	<b>Ballots Cast in Favour of Unions</b>
<b>Total</b>	<b>236</b>	<b>15,808</b>	<b>13,463</b>	<b>6,620</b>
Certification	193	14,348	12,188	6,136
Pre-hearing cases				
One union	59	5,570	4,849	2,070
Two unions	30	4,437	3,653	2,270
Construction				
One union	4	61	56	10
Two unions	1	11	7	7
Three unions	1	2	2	2
Regular cases				
One union	89	3,362	2,867	1,326
Two unions	8	885	736	433
Three unions	1	20	18	18
Termination of Bargaining Rights	42	1,348	1,163	421
Successor Employer	1	112	112	63

\* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

Table 6

**Results of Representation Votes in Cases Disposed of\***  
**Fiscal Year 1981-82**

Type of Case	Number of Votes			Eligible Voters			All Ballots Cast			Ballots Cast in Favour of Unions		
	Total	Won	Lost	Total	In Votes		Total	In Votes		Total	In Votes	
					Won	Lost		Won	Lost		Won	Lost
<b>Total</b>	<b>217</b>	<b>89</b>	<b>128</b>	<b>14,731</b>	<b>6,187</b>	<b>8,544</b>	<b>12,558</b>	<b>5,161</b>	<b>7,397</b>	<b>6,170</b>	<b>3,612</b>	<b>2,558</b>
Certification	176	80	96	13,290	5,662	7,628	11,302	4,719	6,583	5,686	3,345	2,341
Pre-hearing cases												
One union	53	17	36	5,061	988	4,073	4,440	874	3,566	1,858	540	1,318
Two unions	29	19	10	4,353	3,048	1,305	3,570	2,561	1,009	2,213	1,915	298
Construction cases												
One union	4	—	4	61	—	61	56	—	56	10	—	10
Two unions	1	1	—	11	11	—	7	7	—	7	7	—
Three unions	1	1	—	2	2	—	2	2	—	2	2	—
Regular cases												
One union	79	34	45	2,897	1,161	1,736	2,473	897	1,576	1,145	595	550
Two unions	8	7	1	885	432	453	736	360	376	433	268	165
Three unions	1	1	—	20	20	—	18	18	—	18	18	—
Termination of Bargaining Rights	40	8	32	1,329	413	916	1,144	330	814	421	204	217
Successor Employer	1	1	—	112	112	—	112	112	—	63	63	—

\* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

Table 7

**Time Required to Process Applications and Complaints Disposed of, by Major Type of Case  
Fiscal Year 1981-82**

Time Taken (Calendar Days)	All Cases		Certification Cases		Section 89 Cases		Section 124 Cases		All Other Cases	
	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent
<b>Total</b>	<b>2,608</b>	<b>100.0</b>	<b>1,101</b>	<b>100.0</b>	<b>622</b>	<b>100.0</b>	<b>516</b>	<b>100.0</b>	<b>369</b>	<b>100.0</b>
Under 8 days	88	3.4	18	1.6	20	3.2	25	4.8	25	6.8
9-14 days	344	16.6	90	9.8	55	12.1	183	40.3	16	11.1
15-21 days	510	36.1	304	37.4	78	24.6	103	60.3	25	17.9
22-28 days	397	51.3	214	56.9	138	46.8	14	63.0	31	36.3
29-35 days	204	59.2	79	64.0	73	58.5	18	66.5	34	35.5
36-42 days	131	64.2	52	68.8	41	65.1	21	70.5	17	40.1
43-49 days	105	68.2	59	74.1	20	68.3	11	72.7	15	44.2
50-56 days	81	71.3	34	77.2	18	71.2	17	76.0	12	47.4
57-63 days	63	73.7	24	79.4	19	74.3	6	77.1	14	51.2
64-70 days	52	75.7	20	81.2	15	76.7	1	77.3	16	55.6
71-77 days	65	78.2	18	82.8	8	78.0	19	81.0	20	61.0
78-84 days	54	80.3	17	84.4	10	79.6	19	84.7	8	63.1
85-91 days	23	81.2	10	85.3	6	80.5	2	85.1	5	64.5
92-98 days	41	82.7	12	86.4	13	82.6	4	85.9	12	67.8
99-105 days	33	84.0	10	87.3	9	84.1	7	87.2	7	69.6
106-126 days	72	86.8	12	88.4	27	88.4	5	88.2	28	77.2
127-147 days	67	89.3	27	90.8	9	89.9	19	91.9	12	80.5
148-168 days	50	91.3	16	92.3	9	91.3	4	92.6	21	86.2
Over 168 days	228	100.0	85	100.0	54	100.0	38	100.0	51	100.0

Table 8

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1981-82**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Unions</b>	<b>1,089</b>	<b>1,101</b>	<b>716</b>	<b>223</b>	<b>162</b>
<b>CLC Affiliates</b>	<b>935</b>	<b>933</b>	<b>605</b>	<b>191</b>	<b>137</b>
Auto Workers	10	11	4	4	3
Bakery Workers	4	4	4	—	—
Boilermakers	2	3	2	—	1
Brewery Workers	4	7	2	3	2
Bricklayers	5	5	4	—	1
CLC Directly Chartered Unions	3	7	2	2	3
Canadian Paper Workers	18	16	8	7	1
Carpenters	132	131	89	29	23
Cement Workers	4	31	6	24	1
Clothing	8	9	7	1	1
Communications Workers	1	1	1	—	—
Electrical Workers (IBEW)	7	5	4	—	1
Electrical Workers (IUE)	1	1	1	—	—
Electrical Workers (UE)	7	7	1	5	1
Energy and Chemical Workers	9	10	5	4	1
Food Workers	53	55	45	5	5
Garment Workers, United	1	1	1	—	—
Garment Workers, Ladies	8	5	3	2	—
Graphic Arts Union	10	6	5	1	—
Hotel Employees	23	25	12	4	9
Labourers	154	123	83	21	19
Leather and Plastic Workers	1	—	—	—	—
Machinists	11	11	4	2	5
Moulders	2	1	1	—	—
Newspaper Guild	2	3	1	2	—
Novelty Workers	3	2	1	—	1
Office and Professional Employees	6	8	7	1	—
Operating Engineers, Inter- national	47	50	34	9	7
Painters	23	23	19	2	2
Plasterers	1	1	1	—	—
Plumbers	7	7	2	1	4
Printing and Graphic Union	5	5	2	2	1
Public Employees (CUPE)	89	88	70	8	10



Table 8 (cont.)

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1981-82**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
Public Service Alliance	2	2	2	—	—
Public Service Employees (Ont.)	42	38	32	3	3
Railway, Transport and General Workers	5	3	2	—	1
Retail Wholesale Employees	34	42	29	8	5
Rubber Workers	7	7	5	1	1
Seafarers	1	1	—	1	—
Service Employees	71	73	38	25	10
Sheet Metal Workers	8	7	4	3	—
Structural Iron Workers	14	13	10	2	1
Textile Processors	7	6	3	1	2
Theatrical Stage Employees	6	6	3	1	2
Typographical Union	6	5	3	1	1
United Steelworkers	61	59	40	11	8
United Textile Workers	2	2	1	1	—
Woodworkers	8	7	2	4	1
<b>Non-CLC Affiliates</b>	<b>154</b>	<b>168</b>	<b>111</b>	<b>32</b>	<b>25</b>
Allied Health Professionals	3	5	3	1	1
Canadian Industrial Employees	—	1	—	1	—
Canadian Education Workers	1	2	—	2	—
Christian Labour Association	13	13	10	2	1
Guards Association	1	1	1	—	—
Independent Local Unions	27	31	19	9	3
National Council of Canadian Labour	1	1	1	—	—
Ontario Nurses Association	23	24	22	1	1
Operating Engineers, Canadian	21	22	7	4	11
Plant Guard Workers	1	1	1	—	—
Professional Institute	—	1	—	1	—
Teamsters	63	66	47	11	8

Table 9

**Industry Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1981-82**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Industries</b>	<b>1,089</b>	<b>1,101</b>	<b>716</b>	<b>223</b>	<b>162</b>
Manufacturing	224	224	145	56	23
Food, beverages	22	28	21	5	2
Tobacco products	—	—	—	—	—
Rubber, plastic products	11	10	6	3	1
Leather industries	5	7	5	1	1
Textile mill products	8	8	4	1	3
Knitting mills	5	4	1	2	1
Clothing industries	9	7	5	2	—
Wood products	12	11	7	4	—
Furniture, fixtures	7	8	5	2	1
Paper, allied products	11	8	7	—	1
Printing, publishing	21	19	13	4	2
Primary metal industries	9	7	6	1	—
Metal Fabricating industries	36	37	24	8	5
Machinery, except electrical	14	15	8	5	2
Transportation equipment	9	10	4	6	—
Electrical products	8	9	7	2	—
Non-metallic mineral products	14	11	9	1	1
Petroleum, coal products	1	1	1	—	—
Chemical, chemical products	11	13	5	6	2
Miscellaneous manufacturing	11	11	7	3	1
<b>Non-Manufacturing</b>	<b>865</b>	<b>877</b>	<b>571</b>	<b>167</b>	<b>139</b>
Agriculture	—	1	1	—	—
Forestry	4	4	—	3	1
Mining, quarrying	2	4	4	—	—
Construction	350	345	211	76	58
Transportation	46	43	22	8	13
Storage	1	1	1	—	—
Communications	—	—	—	—	—
Electric, gas, water	10	10	8	1	1
Wholesale trade	46	49	38	7	4
Retail trade	59	58	44	4	10
Finance, insurance, real estate	12	15	11	2	2
Education, related services	40	43	34	6	3
Health, welfare services	155	155	115	24	16
Religious organizations	—	—	—	—	—
Recreational services	10	11	6	3	2
Business services	17	14	11	1	2
Personal services	6	7	2	3	1
Accommodation, food services	51	62	34	12	16
Miscellaneous service	33	33	16	12	5
Local government	23	22	13	5	4

**Table 10**
**Size of Bargaining Units in Certification Applications Granted  
Fiscal Year 1981-82**

<b>Size of Bargaining Unit (Number of Employees)</b>	<b>Total</b>		<b>Construction</b>		<b>Non-Construction</b>	
	<b>Number of Appli- cations</b>	<b>Number of Em- ployees</b>	<b>Number of Appli- cations</b>	<b>Number of Em- ployees</b>	<b>Number of Appli- cations</b>	<b>Number of Em- ployees</b>
<b>Total, all sizes</b>	<b>716</b>	<b>20,031</b>	<b>199</b>	<b>1,403</b>	<b>517</b>	<b>18,628</b>
2 - 9 employees	311	1,459	152	621	159	838
10 - 91 employees	156	2,141	34	436	122	1,705
20 - 39 employees	112	3,121	12	296	100	2,825
40 - 99 employees	100	5,786	1	50	99	5,736
100 - 199 employees	23	2,952	—	—	23	2,952
200 - 499 employees	13	4,032	—	—	13	4,032
500 employees or more	1	540	—	—	1	540

**Table 11****Time Required to Process Certification Applications Granted\***  
**Fiscal Year 1981-82**

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
<b>Total</b>	<b>716</b>	<b>100.0</b>	<b>517</b>	<b>100.0</b>	<b>199</b>	<b>100.0</b>
Under 8 days	—	—	—	—	—	—
8-14 days	50	7.0	1	0.2	49	24.6
15-21 days	234	39.7	163	31.7	71	60.3
22-28 days	183	65.2	153	61.3	30	75.4
29-35 days	61	73.7	51	71.2	10	80.4
36-42 days	29	77.8	26	76.2	3	81.9
43-49 days	38	83.1	28	81.6	10	86.9
50-56 days	18	85.6	15	84.5	3	88.4
57-63 days	16	87.8	14	87.2	2	90.5
64-70 days	9	89.1	7	88.6	2	89.4
71-77 days	7	90.1	6	89.7	1	91.0
78-84 days	8	91.2	7	91.1	1	91.5
85-91 days	4	91.8	2	91.5	2	92.5
92-98 days	6	92.6	6	92.6	—	—
99-105 days	3	93.0	2	93.0	1	93.0
106-126 days	3	93.4	3	93.6	—	—
127-147 days	12	95.1	9	95.4	3	94.5
148-168 days	9	96.4	6	96.5	3	96.0
169 days and over	26	100.0	18	100.0	8	100.0

\* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.



## APPENDIX

### Grievance Mediation by The Ontario Labour Relations Board: One Way to Fight Arbitration Costs in the Eighties

Paper Presented by George W. Adams  
Chairman, O.L.R.B. to the  
S.P.I.D.R. Conference, October 20, 1981

Much has been written about the origin, nature and importance of grievance arbitration. It is the cornerstone of industrial democracy in North America and an essential element of free collective bargaining. (See Adams, *Grievance Arbitration and Judicial Review in North America* (1971), 9 Osgoode Hall L.J. 443; and more generally Brown and Beatty, *Canadian Labour Arbitration* (1977).) Its *raison d'être* has been as an inexpensive, speedy and informal system of dispute resolution and as the *quid pro quo* for the prohibition mid-contract conflict.

Unfortunately, the success of the grievance arbitration process has come to represent its Achilles' heel. Its strength initially was as a system of justice unique to each collective bargaining relationship and that the parties controlled it — arbitrators being selected and paid for the parties. As collective bargaining has grown in popularity, so has the need for experienced neutrals in whom the parties have trust and so has the complexity of its jurisprudential output and the concomitant need for experts, usually in the form of lawyers. The supply of seasoned neutrals and competent representatives has not met the required need and costs have escalated. Moreover, the ad hoc and private nature of the process has impeded the effective training of neutrals and its overall management. The adversarial nature of collective bargaining has not helped either. Today, the grievance arbitration process is criticized for its cost, delay and excessive legalism. See Simkin, *Danger Signs in Labor Arbitration Proceedings*, 17th Annual Meeting, National Academy of Arbitrators (1964); Adams, *Grievance Arbitration: A Private or Public Process* (1978), Canadian Industrial Relations and Personnel Development (CCH) 6395; Goldblatt, *Justice Delayed: The Arbitration Process in Ontario* (1974).

These problems are magnified in the construction industry where oftentimes hearings may not take place until many months following the completion of a project. This has led to the use of wildcat strikes, picket lines and work stoppages as the method for resolving disputes, a fact noted by His Honour Judge Harry Waisberg in the *Report of the Royal Commission On Certain Sectors of the Building Industry*, December 1974. The almost irrelevance of traditional grievance arbitration in the construction industry was, to him, suggested by the fact that in the two year period ending in 1973, only one percent of all arbitration awards filed with the Ministry of Labour related to the construction industry while the construction industry employed more than seven percent of the total workforce.

It is equally unfortunate that the grievance process has not been able to resolve more of these problems. Grievance procedures under many collective agreements have come to be inundated by unresolved grievances awaiting arbitration. In this sense, the limited capacity of the arbitration process has in turn eroded the effectiveness and credibility of many grievance procedures. But grievance procedures have come to evidence failings of their own. Rigid adversarial attitudes encourage management and labour to maintain initial positions in the grievance procedure and simply give the illusion of discussion and attempted compromise. The filing of many political grievances by trade unions has not helped to alleviate this

problem. Many grievance procedures are not sufficiently expeditious in dealing with key problems or parties have failed to administer the procedures efficiently. Meetings become irregular, unplanned and lacking in decisiveness. It has also been expressed from time to time that trade unions are reluctant to settle grievances because of the duty of fair representation and the potential for litigation on that front.

A number of solutions have been advocated and tried in order to improve arbitration procedures. See W.J. Usery Jr., *Some Attempts to Reduce Arbitration Costs and Delays*, Monthly Labor Review, November 1972. Parties have tried to fashion expedited procedures although they tend to be confined to the garden variety grievance. Third party associations like the National Academy of Arbitrators and the American Association of Arbitrators have instituted training programmes. Canada, at least in British Columbia and Ontario, has been a little more aggressive by devising legislative solutions. Don Munro, Chairman of the British Columbia Labour Relations Board, is here today to tell you about B.C. experience. I will confine my remarks to one particular approach in Ontario adopted in the construction industry — conferring upon the Labour Relations Board of Ontario in 1975 the authority to act as an arbitration Board in construction industry rights disputes.

Section 124 of the *Labour Relations Act* provides:

124.-(1) Notwithstanding the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 44, a party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination.

(2) A referral under subsection (1) may be made in writing in the prescribed form by a party at any time after delivery of the written grievance to the other party, and the Board shall appoint a date for and hold a hearing with fourteen days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing.

(3) Upon a referral under subsection (1), the Board has exclusive jurisdiction to hear and determine the difference or allegation raised in the grievance referred to it, including any question as to whether the matter is arbitrable, and the provisions of subsections 44(6), (8), (9), (10), (11) and (12) apply with necessary modifications to be Board and to the enforcement of the decision of the Board.

(4) The expense of proceedings under this section, in the amount fixed by the regulations, shall be jointly paid by the parties to the Board for payment into the Consolidated Revenue Fund.

Proclaimed in force on July 18, 1975, the Act permits either party to refer a grievance to the Board for arbitration at any time after the grievance has been delivered to the other party. The Board has also held that a party is not required by the statute to follow the grievance

procedure contained in the collective agreement. (See *Lummas*, [1976] OLRB Rep. Feb. 16.) The Act provides that the Board "... shall appoint a date for and hold a hearing within fourteen days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing." The Board, upon receipt of a referral of a grievance to arbitration, invariably appoints a labour relations officer to meet with the parties to effect a settlement.

From the following table it can be seen that the volume of arbitration proceedings has increased substantially since 1975 and that the Board has been able to cope with its caseload through the settlement efforts of the labour relations officers.

#### Section 124 Cases Received and Disposed of Since 1975

Fiscal Year	Received	Total	Disposed of			
			Settled by Officer	Granted	Board Stage Dismissed	Withdrawn
1975 - 76 ....	75	46	34	5	3	4
1976 - 77 ....	273	210	150	26	9	15
1977 - 78 ....	264	198	151	25	16	6
1978 - 79 ....	238	203	146	16	35	6
1979 - 80 ....	321	227	107	32	35	53
1980 - 81 ....	517	421	367	30	21	43

\*Section 112(a) (now section 124) became effective July 18, 1975.

For example, in the fiscal year ending March 31, 1977, the Board disposed of 210 cases, of which 150 were settled by officers, a settlement rate of approximately 72%. In the most recent fiscal year, the figures have increased dramatically. Of the 421 arbitration cases disposed of by the Board, 367 or over 87% were settled by the officers. The dramatic increase in volume of arbitration proceedings before the Board in 1980-81 may be a partial function of the changes in the legislation affecting the construction industry in 1977 and 1980. Province-wide bargaining in the ICI sector together with the expansion of a trade union's bargaining rights to cover the entire province has meant that employers who operate under a collective agreement in one area and without a collective agreement in another area are now covered by that collective agreement wherever they operate in the ICI in the province. Furthermore, the Act now provides that an employer becomes bound by the *province-wide* collective agreement upon a trade union obtaining bargaining rights. However, the increase in grievances may also be a simple function of a downturn in the economy. A high percentage of grievances before the Board involve the undisputed non-payment of monies owing. For example, in the fiscal year ending March 1978, 80.8% of the grievances filed claimed a failure to remit the necessary contributions to the various welfare, pension and vacation pay funds or the failure to pay the proper wage rates. These cases, which may be categorized as "collection cases" constitute, at the present time approximately 85 percent of the Board's grievance caseload. While in the first year of arbitration by the Board, "collection" cases comprised only 45% of the Board's grievance caseload.

What prevents the Board from being inundated with these grievances, as the table above



shows, is the settlement efforts of our labour relations officers. Without their intervention and they are appointed in every case, a substantial increase in Board resources would be required to process this case load. Indeed, from an administrative agency's viewpoint, this is one of the key features of grievance mediation — cost savings.

An important factor assisting the officer in settling the dispute is the speed with which the matter will be heard and decided if no settlement is reached. The first hearing must take place, by virtue of the statute, within 14 days of the grievance being referred to the Board. The officers will usually arrange a meeting with the parties approximately 6 - 8 days prior to the scheduled hearing although numerous telephone contacts may be made before this meeting. Many cases are settled at that first meeting or between that meeting and the day of the hearing. In the fiscal year ending 1981, 52.9% of all grievance cases dealt with by the Board were disposed of within 21 days of the filing of the grievance with the Board, and 75.9% were disposed of within eight weeks of filing. While the settlement rate would suggest a speedier disposition of the cases, one must recognize that the officer's settlement efforts continue after the hearings are commenced, and that a large number of these proceedings are adjourned upon agreement of the parties pending a settlement which is forthcoming at a later date. It might also be noted that the Board charges the parties, to be shared equally, \$300 for each day of hearing. This fact may also encourage settlements, however, the charge is minimal compared to the cost of a hearing before a private arbitrator. In the most recent fiscal year, settlements and Board decisions directing payments from employers to unions and employees totalled over \$643,000.00. See *Ontario Labour Relations Board Annual Report 1980-81*.

The advantages arising from the intervention of our officers involve more than cost savings to the Board and the parties. Not only is grievance mediation inexpensive, it is quick and informal — the very features of grievance arbitration that made it so attractive in the beginning. See Weiler, *New Alternatives To The Grievance Procedure*, Proceedings 30th Annual Meeting, National Academy of Arbitrators (1977) 105; Gregory and Roomey, *Grievance Mediation: A Trend in the Cost-Conscious Eighties* (1980), Labor Law Journal 502. Settlements worked out with the aid of our officers also tend to reinforce the self governance rationale of collective bargaining. Solutions can be much more imaginative and tailored to the needs of the parties. Arbitrators tend to be limited by remedial convention and are often reluctant to devise remedies requiring administration.

I believe, as well, that in most grievances the result is pretty much predictable after a quick recitation of the facts. The intervention of experienced officers in such cases may take the form of an advisory opinion of what the Board is likely to do. This limited degree of intervention is often all that is required to trigger a settlement. Both parties come to recognize that it would simply be silly to spend another \$2,000 or so on legal fees to try and achieve a different result. It seems to me that this form of rights dispute resolution is likely to be fraught with fewer legalisms and therefore more comprehensible to the affected parties. The recitation of precedent, legal maxims and contract provisions in an arbitration opinion is too often just 'bumf' to justify the fee or to render the result immune from possible judicial review. Where contractual intent is not at all clear, one can argue there is less justification for an imposed arbitral result. The parties not having contemplated the particular problem, grievance mediation may be particularly suitable to fashioning a solution for the duration of the agreement without the somewhat arbitrary win/lose result of arbitration. The intervention of our officers can also soften the adversarial stance of the parties thereby making grievance procedures more effective. We have found that officers can play a key role by speaking directly with a difficult grievor, trade union or employer in a way that representatives cannot and with



beneficial effect. As with all third party intervention, face saving and concession can be arranged to get at the more human reasons for conflict. It may also be that solutions worked out with the assistance of a third party may be more immune from review under the duty of fair representation. Such compromises are likely to appear more fair and justified than the typical settlement without intervention.

I might also point out that by having our officers engage in mediation instead of the Board, we are able to concentrate our settlement efforts more efficiently and avoid the inherent conflicts associated with med/arb techniques. The settlement role of officers does not have to be scheduled to accommodate adjudication activity. Their role is limited to settlement activity and some great efficiencies arise out of this specialization. Specialization also avoids any perceived unfairness of a party's candor in the settlement process being used against him if settlement breaks down. All communications with our officer are privileged and, because of this, they are sometimes able to achieve productive communications between the parties that would never have happened had they been left alone pending litigation.

Finally, the role of these procedures can be analogized to that of small claims courts. So many grievances involve very small sums of money that simply do not justify the costs involved in conventional arbitration. In this respect section 124 of the *Labour Relations Act* plays a very important function.

Paradoxically then, a system imposed by government and managed by an administrative agency may be a way in the 1980's of recapturing the key benefits of a process invented by the parties in the 20's and 30's. It also is further proof that the strength of any legal system overwhelmingly depends upon self-compliance. The Ontario Labour Relations Board's experience in this area suggests that grievance mediation is an important way of rehabilitating depressed grievance arbitration procedures and restoring industrial self-governance.



*Ontario Labour Relations Board,  
400 University Avenue,  
Toronto, Ontario*

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**ONTARIO  
LABOUR RELATIONS BOARD**

**ANNUAL REPORT  
1982-83**







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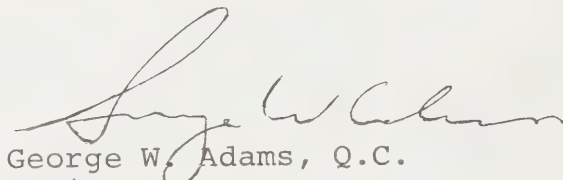
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The Honourable Russell H. Ramsay  
Minister of Labour  
400 University Avenue  
Toronto, Ontario  
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Dear Mr. Ramsay:

It is my pleasure to provide to you the third  
Annual Report of the Ontario Labour Relations Board for  
the period commencing April 1, 1982 to March 31, 1983.

Respectfully submitted,

  
George W. Adams, Q.C.  
Chairman

GWA/gm

## MESSAGE FROM THE CHAIRMAN

The Ontario Labour Relations Board continued to examine and refine its administrative processes and support services and to improve the Board's level of service to the community in the face of increasing costs and caseloads at a time of overall government restraint. We developed and installed a computerized information retrieval system in the Board's library and are beginning to use computer technology in the publication and distribution of our Monthly Reports. Our computerized case monitoring system which enables us to "track" cases from the time they are filed to their disposition has been refined to provide other valuable information to enable us to manage the Board's caseload and resources more efficiently. If the Board hopes to cope with the conflicting demands which will be made on it in the future, it must be innovative in all areas of its activities. The issuance of thoughtful decisions continues as an important aspect of the Board's operations but it is only one of several important areas.

For example, while it is generally thought that the Board's primary activity is the adjudication of contested matters, in fact, most of the Board's day to day case disposition is accomplished through the efforts of our field staff. The Board's field program is second to none in Canada and continues to serve the Ontario labour relations community well. The Board is committed to the amicable settlement of the matters which come before it when this is possible.

The reorganization of the field staff last year has proven successful. The Manager of Field Services and the Senior Labour Relations Officers now identify the "tough" cases and devote additional resources to their resolution. The new arrangement has also provided much more effective co-ordination of field activity. Consistent with their need to be thoroughly familiar with labour board practices and developments, all members of the field staff have access to the Board library's research computer and to the Board's legal services. They are therefore able to quickly obtain all key Board decisions relating to any particular assignment in order to assist the parties in reaching a resolution of their dispute without appearing before the Board. The field staff participated as resource persons in a day-long program devoted to the Board's certification processes presented by the Law Society of Upper Canada. In addition to their monthly staff meetings where selected Board practices are considered and reviewed, the field staff had the benefit of a day-long seminar dealing with dispute resolution techniques conducted by Professor Bryan Downie, of the Queen's University Faculty of Business.

However, despite the best efforts of our field staff, many cases require adjudication. As can be seen from the case highlights for this fiscal year, the Board dealt with a number of significant matters and continued to provide innovative solutions where required. During the province-wide strikes in the construction industry in the summer, the Board began to enter into the realm of picket-line regulation, later applying this new approach to non-construction settings as well. The Board continued to refine its approach to petitions and counter-petitions and was required to interpret and apply the *Inflation Restraint Act* and the *Canadian Charter of Rights and Freedoms*. The Board also dealt with a wide variety of unfair labour practice matters ranging from employer freedom of speech issues to whether the imposition of a trusteeship upon a local union violated the Act.

Board decisions were the subject of several judicial proceedings and I am able to report that all but one were dismissed.

This year the Board commenced the issuance of a "Monthly Highlights" publication. The purpose of this initiative is to ensure that the community has notice of Board developments as soon as possible and well before the issuance of our formal Monthly Report.

The Ontario Labour Relations Board occupies a central position in Ontario's labour relations community. Consistent with this role, members of the Board have continued to make important efforts to meet with constituency representatives to explain the Board's activities, as has the Chairman. The Board, it must be realized, is as important an instrument of education as it is one of dispute resolution.

Finally, I wish to record my personal thanks to the staff of the Ontario Labour Relations Board for their substantial efforts over the past year and to the labour relations community for its ongoing support.



# I INTRODUCTION

This is the third issue of the Ontario Labour Relations Board Annual Report, which commenced publication in 1980-1981. This issue covers the fiscal year April 1, 1982 to March 31, 1983.

The report contains up to date information on the organizational structure and administrative developments of interest to the public and notes changes in personnel of the Board. As in previous years, this issue provides a statistical summary and analysis of the work-load carried by the Board during the fiscal year under review. Detailed statistical tables are provided on several aspects of the Board's function.

In view of the response from the labour relations community, this year the section highlighting key decisions of the Board issued during the year has been expanded. A brief description of every Board matter that was subject to review by the courts during the year is provided. Since many of these court decisions are unreported, the summaries in the Board's Annual Report have been well received, particularly by the practising bar. The report will continue to provide a legislative history of the *Labour Relations Act* and note any legislative amendments made to the Act during the year.

A paper entitled "The Labour Relations System in a Time of Economic Conflict" presented by the Chairman of the Board at the P.A.T. Annual Conference in Toronto in April, 1983 is also included in this report.

## II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of public hearing before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

"...the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board, (1978), 1 Advocate's Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today—management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers—something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when the dispute arises in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944. In his book, *The Ontario Labour Court 1943-44*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise:-

"...the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a wartime move by the Federal Government to centralize labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over "property and civil rights." (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5)

The Act was subsequently narrowed so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, "opt in" to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations "in the same form and to the same effect as that... Act which may be passed by the Parliament of Canada at the session currently in progress..." This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board's role was fairly limited. There was no enforcement mechanism at the Board's disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lockout unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary to the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board's power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the



Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

*The Labour Relations Amendment Act, 1960*, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario*, May, 1976). (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31.) Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, The Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation." This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make "cease and desist" orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and be enforceable as orders of the Court.



A major increase in the Board's remedial powers under the *Labour Relations Act* occurred in 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, *The Labour Relations Amendment Act, 1980 (No. 2)*, S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer.

There were no amendments to the *Labour Relations Act* during the year under review.

## THE FULL BOARD AND SENIOR STAFF



*Front Row:* (Left to right)

J. D. Bell, J. P. Wilson, K. M. Burkett, G. W. Adams Q. C. (Chairman), I. M. Stamp, M. Eayrs, D. E. Franks, G. G. Brent, E. Meslin

*Middle Row:*

H. Kobryn, L. Hemsworth, P. V. Grasso, R. F. Egan, W. F. Rutherford, L. C. Collins, J. W. Murray, I. C. A. Springate, W. G. Donnelly, R. A. Furness, M. G. Mitchnick.

*Back Row:*

A. Hershkovitz, E. J. Brady, F. S. Cooke, N. B. Satterfield, J. Kennedy, J. A. Ronson, B. L. Armstrong, N. V. Dissanayake, J. A. MacDonald, D. K. Aynsley

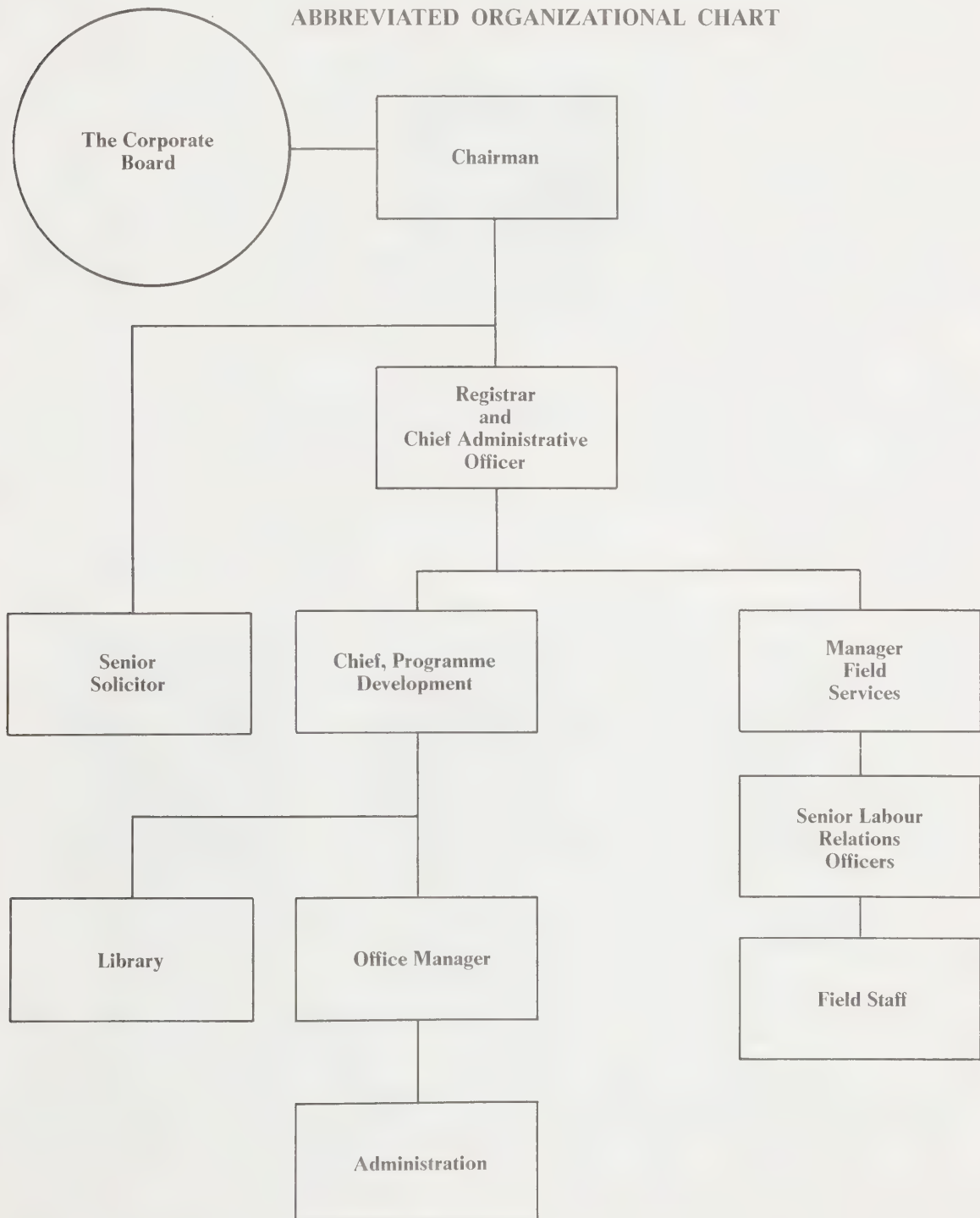
*Absent:*

D. B. Archer, C. A. Ballentine, C. G. Bourne, E. N. Davis, H. Freedman, W. Gibson, A. Gribben, O. Hodges, R. D. Howe, R. D. Joyce, R. O. MacDowell, B. K. Lee, S. H. Lewis, C. F. Murray, F. W. Murray, P. J. O'Keeffe, M. G. Picher, P. C. Picher, R. Redford, R. J. Swenor, E. G. Theobald, W. H. Wightman,

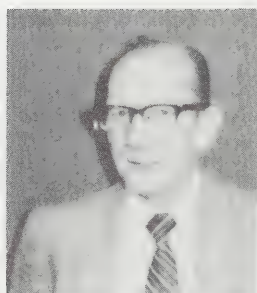
### III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:

ABBREVIATED ORGANIZATIONAL CHART



## SENIOR STAFF



**Don K. Aynsley**  
Registrar and  
Chief Administrative Officer



**Harry Freedman**  
Senior Solicitor



**Eleanor Meslin**  
Chief, Programme  
Development



**Jack A. Macdonald**  
Manager, Field  
Services



## IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act* as follows:

“...it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chairman and an Alternate Chairman, several Vice-Chairmen and a number of Members representative of labour and management respectively in equal numbers. These appointments are made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the *Labour Relations Act*, R.S.O. 1980, c. 228, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not subject to appeal and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report from time to time.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 464. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. During the year under review the Board was required on several occasions to determine the impact of the *Canadian Charter of Rights and Freedoms* and the *Inflation Restraint Act* on the rights of parties under the *Labour Relations Act* and the *Hospital Labour Disputes Arbitration Act*.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Office of the Solicitor.

#### **(a) ADMINISTRATIVE DIVISION**

The Registrar and Chief Administrative Officer is the senior administrative official of the Board. He is responsible for supervising the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings, the holding of votes or particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, constraints on its access to public funds, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload, within the resource parameters set for it, underpins much of its contribution to labour relations harmony in this province.

The Chief, Programme Development and the Manager, Field Services report directly to the Registrar and Chief Administrative Officer. The former manages the day-to-day administrative operation and the latter the field services. An Administrative Committee comprised of the Chairman, Alternate Chairman, Registrar and Chief Administrative Officer, Chief, Programme Development, Manager Field Services, Senior Solicitor and Officer Manager meets regularly to discuss all aspects of Board administration and management.

The administrative division of the Board includes; office management, case monitoring, and library services.



## **1. Office Management**

An administrative support staff of approximately 60 people, headed by an Office Manager who reports to the Chief, Programme Development, and a Senior Clerical Supervisor processes all the applications received by the Board.

Four primary sections deal with applications:

(1)The certification section handles all applications for certification, termination and accreditation.

(2)The sundry section processes all other applications including unfair labour practice complaints, grievances in the construction industry and illegal strike and lock-out proceedings.

(3)The vote section deals with all representation votes.

(4)The clerks section reviews evidence in support of, or opposition to, trade unions filed with the Board in certification and termination applications and prepares the material necessary for the Board to conduct hearings and when necessary, attends hearings to assist the Board.

The bulk of the Board's caseload is made up of applications for certification, unfair labour practice complaints and referrals to arbitration of construction industry grievances.

The Registrar's office is responsible for setting hearing dates for all cases and maintaining an up-to-date availability roster of all Vice-Chairmen and Board Members for scheduling purposes.

## **2. Case Monitoring**

As indicated in last year's Annual Report, the case monitoring function has now been computerized. Data on each case is coded on a day-to-day basis as the status changes. Reports are issued weekly and monthly on the progress of each case including time lapse statistics on disposition times, by case type.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can lead to increased productivity and better service to the community.

## **3. Library Services**

The Ontario Labour Relations Board Library employs a full-time professional librarian and a library technician to manage a collection of approximately 900 texts, 100 journals and 25 case reports in areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The Library has approximately 3,500 volumes. The collection includes



decisions from other jurisdictions, including the Canada Labour Relations Board, the U.S. National Labour Relations Board and provincial labour boards from across Canada.

The Library staff provides research services for Board staff and assists the library users.

The Board Library has created a computer index to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, statutes considered, cases cited, date, etc. The system also provides a microfiche index to the decisions. It permits Board members and staff prompt and accurate access to previous Board decisions dealing with particular issues under consideration. The Board is the first labour relations tribunal in Canada to develop and implement this type of system. It has been reviewed by officials from both the Canada and British Columbia Labour Relations Boards and may be used as a model in the development of their own respective computerized information retrieval systems.

## **(b) FIELD SERVICES**

The Board holds to the view that the interests of the parties and labour relations generally in this province are best served by settlement in the majority of cases. In furtherance of its goal to resolve as many of the matters brought before it as possible without the need for a formal hearing, the Board reorganized its field services division in the previous fiscal year. The Board had previously employed 17 labour relations officers under the direction of a senior labour relations officer. In response to a case load increasing in both volume and complexity, a new position of Manager Field Services was created and three of the Board's more experienced officers, who had previously served as informal group leaders, were promoted to the position of Senior Labour Relations Officer. Mr. J.A. "Jack" MacDonald was appointed to the position of Manager, Field Services effective December 1, 1981. Mr. MacDonald has extensive experience in labour relations and had served as the Board's Senior Labour Relations Officer since December 13, 1976. In the position of Manager, Field Services, Mr. MacDonald is responsible for the overall functioning of the division with particular emphasis upon the setting and monitoring of performance standards case assignments, staff development and inter-Board liaison. The Senior Labour Relations Officers, Mr. S. Netherton, Mr. L. Stickland and Mr. N. Wilson, have each been assigned a team of officers, are responsible for providing guidance and advise in the handling of individual cases, managing the Board's certification day settlement efforts on rotating weeks and assisting with the performance appraisals of the Board's labour relations officers. In addition, the Senior Labour Relations Officers carry an active case load in the field.

The field staff continued its excellent performance in fiscal 1982-83. With the field staff settlement rate running at about 88 per cent on all matters, an increase of three percentage points over the previous year's settlement rate, the impact on the overall administration of the Board is self-evident. The Board's field staff provided the underpinning to the improvement in the time taken for disposing of cases and to the Board's overall excellent performance in fiscal year 1982-83.

The Alternate Chairman supervises field activity, and along with the Manager, Field Services and Senior Solicitor meets with all officers on a monthly basis to review recent developments and program performance.



### (c) OFFICE OF THE SOLICITOR

The Office of the Solicitor, under the direction of the Senior Solicitor of the Board, reports directly to the Chairman. A solicitor assists the Senior Solicitor in carrying out the functions of this office. In addition, each year the Board employs several articling law students to assist in the solicitor's work.

The Office of the Solicitor is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chairman, Vice-Chairman and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Office of the Solicitor is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the Office of the Solicitor. When preparation or revision of practice notes, Board Rules or forms become necessary, the Office of the Solicitor is responsible for undertaking those tasks.

The Senior Solicitor is active in the staff development programme of the Board and the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, the solicitors prepare written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The Senior Solicitor also advises the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Office of the Solicitor is the representation of the Board's interest in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, the Senior Solicitor in consultation with the Chairman, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Office of the Solicitor is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

During the year under review the Courts dealt with ten applications for judicial review. Of these, nine were dismissed and one granted. In that one case, an application for leave to appeal to the Court of Appeal is pending. In another case an application for an injunction to restrain picketing pending the determination of an application for judicial review was dismissed. In one case, leave to appeal to the Court of Appeal was granted and the appeal from the dismissal of an application for judicial review by the Divisional Court is pending. In one case where the Court of Appeal dismissed an appeal from the Divisional Court quashing a Board decision, leave to appeal to the Supreme Court of Canada was refused.

During the fiscal year six applications to stay Board decisions were filed and all six applications were dismissed.

The Office of the Solicitor maintains an information service through which any person may obtain, by telephone, general information relating to the *Labour Relations Act*, the Regulations,

procedures and practices of the Board, and other related legislation. It is also possible for a member of the public to obtain such information at a personal interview with a member of the Board's legal staff. The solicitors also receive and respond to written inquiries coming from the public. In addition to the two pamphlets entitled "Certification by the Ontario Labour Relations Board" and "Rights of Employees, Employers and Trade Unions", the Board will shortly issue a further pamphlet entitled "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board." In September of 1982, the Board commenced a publication entitled "Monthly Highlights". This publication, contains summaries of significant decisions of the Board during the month and other notices and administrative developments of interest to the labour relations community. The Board strives to issue the Monthly Highlights as quickly as possible after the end of each month and already it has been well received by the community. The Board recently revised the Construction Industry Map of Ontario, depicting the geographic areas used by the Board in construction industry certification cases. The Office of the Solicitor is responsible for producing the Board's Annual Report and for periodically revising the publication entitled "A Guide to the Labour Relations Act", which is an explanation in layman's terms, of the significant provisions of the Act.

The Office of the Solicitor acts on behalf of the Board in respect of inquiries or complaints brought to the Board's attention by the Ombudsman of Ontario. During the year under review, seven formal complaints relating to the Board were disposed of by the Ombudsman. In five of these complaints, after conducting an investigation, the complaints were found by the Ombudsman to be unsupportable. One complaint was withdrawn and in one the Board was notified that the complainant was satisfied with the Board's explanation.

The Office of the Solicitor is also responsible for the publication of the Ontario Labour Relations Board Monthly Report, a monthly series of selected Board decisions which commenced in 1944. The Senior Solicitor is Editor of this publication, which is one of the oldest and most prestigious labour board reports in North America. The Board has computerized its subscription list to ensure maximum efficiency in dealing with the subscribers to the Report and is also commencing to use its existing word processing equipment to provide the typesetter of the Monthly Report with machine readable manuscript, thus reducing both the cost and time of its publication. The Board has been actively seeking a wider distribution of its Monthly Reports by placing inserts introducing it in other publications mailed by the Ministry of Labour.

## MEMBERS OF THE BOARD

In the year under review, the Board consisted of the following persons:

GEORGE W. ADAMS, Q.C.      *Chairman*

Appointed Chairman of the Ontario Labour Relations Board effective September 1, 1979, Mr. Adams holds degrees of B.A. (McM) 1967, LL.B. (Osgoode, with honours) 1970, and LL.M. (Harvard 1971). His professional background includes: law professor at Osgoode Hall Law School, 1971-78; Vice-Chairman Ontario Labour Relations Board, 1974-75; Assistant Deputy Minister of Labour, Province of Ontario, 1975-77; Vice-Chairman, Ontario Education Relations Commission, 1977-79; Chairman, Ontario Grievance Settlement Board 1977-79; and private practitioner with a Toronto law firm, 1978-79. Mr. Adams is the author of numerous books, monographs and articles, the majority of them relating to labour law. He is an experienced arbitrator, mediator and fact-finder. He is a member of the National Academy of Arbitrators and the Law Society of Upper Canada. In the year under review, Mr. Adams presented the following paper: "The Labour Code in the 1980's—The Impact of the Code Beyond the Province"; Pacific Institute of Law and Public Policy Conference, Vancouver, B.C., January 25 - 26, 1983.

KEVIN M. BURKETT      *Alternate Chairman*

Mr. Burkett has served as the Board's Alternate Chairman since September of 1979. He was first appointed as a Vice-Chairman of the Board in November of 1975. Mr. Burkett, who holds B.A. and M.B.A. degrees from the University of Toronto, has had much varied experience in industry, trade unions and government prior to joining the Board. Having served as the Research Director/Negotiator of the Civil Service Association of Ontario (predecessor of the Ontario Public Service Employees Union), from 1968 to 1970, he joined the Ontario Ministry of Labour in 1970 as a conciliation officer and was appointed as a mediator in 1972. In 1973 he joined Ontario Hydro as Senior Industrial Labour Relations Officer, a post he held until his appointment to the Board. Mr. Burkett is an experienced arbitrator, mediator and fact-finder, both in the private and public sectors. Mr. Burkett served as the Chairman of the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mining Plants in Ontario, whose report was submitted to the respective Ministers of Labour in May 1981.

GAIL G. BRENT      *Vice-Chairman*

A part-time Vice-Chairman since 1977, Mrs. Brent graduated in 1965 with a B.A. from the University of Toronto and with a LL.B. from Queen's University in 1968; she was called to the Bar in 1975. Mrs. Brent taught law at Queen's University from 1970 and 1974, and at the University of Western Ontario from 1974 to 1977. She was appointed to the permanent list of approved arbitrators of the Labour-Management Arbitration Commission in 1974, and since 1977 has been an active arbitrator and adjudicator. She has been an arbitrator with the Ontario Police Arbitration Commission since 1974. In 1980 Mrs. Brent was appointed as a Commissioner of both the Education Relations Commission and the Colleges Relations Commission.

E. NORRIS DAVIS      *Vice-Chairman*

Mr. Davis, who holds the degree of LL.B. (Sask.) 1938, was first appointed to the Board as an employer representative in 1948. From 1952 to 1953 he served as the Chairman of the Board. In



1953 Mr. Davis left the Board and during the next 15 years held several positions in corporate personnel and industrial relations, including a number of years as President of Carling O'Keefe Breweries of Canada Limited. Mr. Davis returned to the Board as a part-time Vice-Chairman in 1977.

RORY F. EGAN            *Vice-Chairman*

Mr. Egan completed his undergraduate work at St. Michael's College, University of Toronto in 1938. After the intervening world war, Mr. Egan earned a law degree from the same university in 1945. Called to the Bar in the same year, he engaged in the practice of law, and served for one year as Assistant Crown Attorney in St. Thomas, Ontario. In 1954 he joined A.V. Roe as Legal Assistant to the Vice-President of Industrial Relations. Mr. Egan returned to private practice with a law firm specializing in labour relations law in 1959. In 1963 he left his law practice to devote his time to chairing boards of conciliation and arbitration. Mr. Egan was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1966 and in 1974 was designated Alternate Chairman. He was appointed Chairman of the Ontario Police Arbitration Commission in 1976. Mr. Egan retired from the Board in 1979, but has continued to serve as a part-time Vice-Chairman.

DON E. FRANKS            *Vice-Chairman*

Mr. Franks is a graduate of McMaster University (B.A. 1960) and Osgoode Hall Law School (LL.B. 1967). Joining the Board in 1969, he served as its Solicitor. In 1972 Mr. Franks was appointed a Vice-Chairman of the Board. He occupied this position until 1975 when he was appointed Vice-Chairman of the Construction Industry Review Panel, which position he held until May, 1980. Mr. Franks also served, during 1975-76, as the Commissioner on the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario. The report prepared by him led to the amendment of *The Labour Relations Act* in 1977 which provided for province-wide bargaining in the construction industry. Mr. Franks was also involved in the implementation and monitoring of the province-wide bargaining scheme. In 1978 he was appointed chairman of a conciliation board by the government of Saskatchewan, which resolved a two-month province-wide strike by the Labourers' Union. Mr. Franks returned to the Labour Relations Board as a Vice-Chairman in May of 1980.

RON A. FURNESS            *Vice-Chairman*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his LL.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chairman in 1969.

ROBERT D. HOWE            *Vice-Chairman*

Mr. Howe was appointed to the Board as a part-time Vice-Chairman in February, 1980 and became a full-time Vice-Chairman effective June 1, 1981. He graduated with a LL.B. (gold-medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 he was a law Professor at the Faculty of Law, University of Windsor. From 1977 until his appointment to the Board, he practised law as an associate of a Windsor law



firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator.

RICHARD O. MacDOWELL      *Vice-Chairman*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), a M.Sc. (with Distinction) in Economics from the London School of Economics & Political Science (1970) and a LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chairman in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit.

MORT. G. MITCHNICK      *Vice-Chairman*

Mr. Mitchnick was appointed as Vice-Chairman of the Board in November, 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his LL.B. at the University of Toronto Law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board.

CORRINE F. MURRAY      *Vice-Chairman*

Mrs. Murray joined the Board as a Vice-Chairman in August 1982. Prior to her appointment, she practised labour law with a Toronto law firm for six years. During this period, Mrs. Murray had acted as lecturer on the subject of labour law for numerous management groups. Having graduated from Dalhousie Law School, Halifax, Nova Scotia, she was subsequently called to the bar in British Columbia and Ontario.

MICHEL G. PICHER      *Vice-Chairman*

Mr. Picher holds the degrees of A.B. (Colby College, Maine 1967), LL.B. (Queen's University, 1972) and LL.M. (Harvard, 1974). He was appointed a Vice-Chairman of the Board in 1976. Prior to his appointment, Mr. Picher taught law as Assistant Professor in the Faculty of Law at the University of Ottawa from 1974 to 1976. He is an experienced arbitrator, mediator and fact-finder.

PAMELA C. PICHER      *Vice-Chairman*

Mrs. Picher was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1976. She is a graduate of Colby College, Maine (A.B., 1967) and Queen's University (LL.B., 1973). She is presently working towards a LL.M. degree from Harvard University, the required thesis having been completed. Prior to joining the Board, Mrs. Picher was an Assistant Professor at the University of Ottawa Law School. In 1975 she was commissioned by the Law Reform Commission of Canada to write a paper for the Administrative Law Section, which she presented in July, 1976. Mrs. Picher has several other legal publications to her credit and is an experienced arbitrator and fact-finder. In June of 1981, Mrs. Picher moved from full-time to part-time status.

NORMAN B. SATTERFIELD      *Vice-Chairman*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chairman. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He has been involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years. Mr. Satterfield is a past Director of the Construction Labour Relations Association of Ontario and a past Member of the National Labour Relations Committee of the Canadian Manufacturers' Association.

IAN C.A. SPRINGATE      *Vice-Chairman*

Mr. Springate has been a Vice-Chairman of the Board since May of 1976. He has degrees of B.A. with distinction, (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chairman. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator.

**Members Representative of Labour and Management**

HOWARD J.F. ADE

Mr. Ade was appointed as a management representative Board Member in January, 1972. Having retired from the Royal Canadian Mounted Police in 1957, Mr. Ade joined Standard Industries Limited as its Director of Labour Relations. He has served as Chairman of the Labour Relations Committee of the Canadian Construction Association and the Labour Bureau of the Ontario Federation of Construction Associations. He has also been a member of negotiating committees and labour relations committees in various sections of the construction industry. Mr. Ade has served as labour relations advisor and consultant to several employers and employer associations in the construction industry. He retired from the position as Board Member in August, 1982.

DAVID B. ARCHER

One of the most senior persons on the Board, Mr. Archer was appointed as a part-time Board Member representing labour in 1948. He is a past president of the Textile Workers' Union (Local 1) and also of the Toronto and Lakeshore Labour Council. Mr. Archer was a vice-president of the Canadian Labour Congress and for several years held the position of President of the Ontario Federation of Labour. The other numerous offices Mr. Archer has held include Executive Member of the Ontario Economic Council, and Member of the Prime Minister's Advisory Committee on Economic Policy. He retired from his position as Board Member in August 1982.

BROMLEY L. ARMSTRONG

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in March of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr.

Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board.

#### CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

#### JOHN D. BELL

Mr. Bell has been a full-time Member of the Board representing management since 1970. He was employed for 33 years at Massey-Ferguson Limited in various personnel and industrial relations capacities prior to his appointment to the Board. The last position he held at the Company was Director of Personnel and Industrial Relations, Industrial and Construction Machinery Division. Mr. Bell retired as a full-time Board Member in August, 1982 and was subsequently re-appointed as part-time Board Member.

#### C. GORDON BOURNE

Mr. Bourne has been a part-time Member of the Board representing management since April of 1977. Between 1945 and 1977, he was employed by Molson's Brewery (in Quebec and in Ontario) in various personnel and industrial relations capacities. Among the offices Mr. Bourne held prior to his appointment to the Board include: Director of the Montreal Personnel Association (1952-54); Director (1962-67) and President (1966-67) of the Personnel Association of Toronto; Member of the Canadian Manufacturers' Association Ontario Labour Relations Committee (1963-77); and Member of the Ontario Brewers' Industrial Relations Committee (1955-77).

#### E. JIM BRADY

Mr. Brady was appointed a part-time Member of the Board representing management in November, 1979. He was employed in various capacities in personnel and industrial relations for 34 years prior to his appointment. He spent the majority of this time at Kimberley-Clark of Canada Limited, where he became Director of Industrial Relations in 1972. In 1975, Mr. Brandy was appointed Vice-President of Industrial Relations of the Abitibi-Price Inc. Group.

#### LEONARD C. COLLINS

Mr. Collins was appointed a part-time Member of the Board representing labour in November, 1982. Prior to joining the Board Mr. Collins had been very active in the trade union movement in Ontario. From 1945 to 1960 he held various positions with Local 232 of the United Rubber



Workers, including the positions of Vice-President from 1950 to 1954 and President from 1954 to 1960. Since 1960 he has been an International Field Representative for the United Rubber Workers and since 1971 has from time to time served as acting Director of District 6. Mr. Collins is very experienced in labour board and arbitration board proceedings.

#### F. STEWART COOKE

In October, 1981, Mr. Cooke was appointed as a full-time Board Member representing labour. Having served in the Army in the early 1940's, Mr. Cooke studied Economics and Law at Victoria College for two years. Mr. Cooke's career with the United Steelworkers of America commenced in 1948 when he joined its staff. In 1949, he was elected secretary of the Hamilton Labour Council of the Canadian Congress of Labour. In 1953, Mr. Cooke was appointed Supervisor for the Hamilton area, a position he held until March, 1971. In 1956, he was elected Secretary of the merged Hamilton and District Labour Council of the Canadian Labour Congress. In 1962 Mr. Cooke was elected Vice-President of the Hamilton and District Labour Council. In March of 1971 Mr. Cooke was appointed District Representative of the Steelworkers District 6. Subsequently, Mr. Cooke held several key positions with the Steelworkers, including International Representative, before being elected Director of District 6 in 1977, a position he held until September, 1981. From 1972 to 1977 he was a Vice-President of the Ontario Federation of Labour. Mr. Cooke has served on the executive boards of numerous public, social and charitable organizations and has held several positions on the executive of the New Democratic Party of Canada including the position of Vice-President, from 1967 - 1980. He has represented the Canadian Labour movement at many conferences, including the Iron and Steel Committee of the International Labour Organization, in Switzerland, 1969, and the International Metalworkers Federation Iron and Steel Conference in Belgium, 1969. Mr. Cooke has also been on delegations to the U.S.S.R., Japan, Sweden, Norway, Finland, France, and Holland.

#### W. GORDON DONNELLY

Mr. Donnelly was appointed a part-time Board Member representing management in 1979. Having obtained a B.A. (1939) and B.C.L. (1947) from McGill University of Montreal, he practised law in the Province of Quebec. In 1947 he joined the Aluminum Company of Canada Limited, where he progressed from Industrial Relations Supervisor, Shawinigan Works, to Vice-President Personnel and Industrial Relations, Alcan Products Limited, Toronto, Ontario 1970.

#### MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. A graduate of the University of British Columbia. Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he had held include: Director of Labour Relations of the Ontario Federation of Construction Associations, 1970; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel, 1972; Director of Industrial Relations, Kaiser Canada, 1974; Manager of Industrial Relations of the SNC Group, 1975; and Executive Director of the Construction Employers Co-ordinating Council of Ontario, 1979. Mr. Eayrs is also a past Chairman of the National Labour Relations Committee of the Canadian Construction Association.



## MICHAEL J. FENWICK

Mr. Fenwick was appointed a part-time Board Member representing labour in October, 1976. Since 1940 he has been involved in organizing, negotiating and appearing before arbitration and conciliation boards and has participated in many other facets of union activity. Employed by the Steelworkers Organizing Committee (CIO), which was later renamed the United Steelworkers of America, between 1940 and 1954 Mr. Fenwick administered the business affairs of the Union's locals in Oshawa, Whitby, Ajax, Bowmanville and Port Hope. In 1954, he was promoted to Assistant to the Director of District 6 and he served in that capacity until his appointment to the Board. In November, 1982, Mr. Fenwick retired from his position at the Board.

## WILLIAM GIBSON

Mr. Gibson was appointed a part-time Board Member representing management in 1978. He has been employed by Robert McAlpine Limited since 1954 and is Vice-President of that company with a portfolio that includes the responsibility for labour relations for the Company's operations throughout Canada. Mr. Gibson has been very active in the field of labour relations involving contractors and has held several key positions in various construction contractors' associations.

## PAT V. GRASSO

Appointed a part-time member of the Board representing labour in December, 1982, Mr. Grasso has been active in the labour movement in Ontario for many years. Having held various offices in District 50 of the United Mine Workers of America, he was appointed Staff Representative in 1958, and Assistant to the Regional Director for Ontario in 1965. In 1969, Mr. Grasso became the Regional Director for Ontario and was elected to the International Executive Board. When District 50 merged with the United Steelworkers of America in 1972, he became Staff Representative of the Steelworkers in charge of organizing in the Toronto area. In January 1982, Mr. Grasso was transferred to the District 6 office of the Steelworkers and appointed District Representative in charge of co-ordinating, organizing and special projects.

## ANNE S. GRIBBEN

Ms. Gribben, a registered nurse by profession, obtained a B.A. from the University of Toronto in 1968, in addition to her nursing qualifications. Her nursing career at the Toronto Western Hospital included 13 years served in a supervisory capacity. She has served on various committees of both the Canadian Nurses' Association and the Registered Nurses' Association since 1950. An Executive Officer of the former District No. 5, Registered Nurses' Association of Ontario from 1960, during 1964-65 she was involved in its re-organization into the present-day Metro Toronto Chapter. Ms. Gribben joined the Employment Relations Department of the Registered Nurses' Association of Ontario in 1965, and became its Director in 1968. Ms. Gribben relinquished that post in 1974 to become the Chief Executive Officer of the Ontario Nurses' Association. She was appointed a part-time Board Member representing labour in 1975—the first woman to be appointed as a Board Member of the Ontario Labour Relations Board.

## LLOYD HEMSWORTH

Mr. Hemsworth has served as a part-time Member of the Board representing management since August of 1975. Having obtained a B.A. degree (1939) from the University of Western Ontario, he returned to complete a management training course at that university in 1954. Mr. Hemsworth is

also a part-time Member of the Public Service Staff Relations Board. Prior to his appointment to the Ontario Labour Relations Board, Mr. Hemsworth held several key positions in the personnel and industrial relations departments at Canadian Industries Limited, Kimberley-Clark of Canada and de Havilland Aircraft. Mr. Hemsworth has presented lectures and papers at numerous universities and seminars.

#### ALBERT HERSHKOVITZ

Mr. Hershkovitz has served as a part-time Board Member representing labour since 1976. He has been the Business Agent of the Fur, Leather, Shoe and Allied Workers' Union, Locals 82 and 62, since 1956, and a Vice-President of the Ontario Federation of Labour since 1974. In 1977 he became the President of the Ontario Provincial Council, United Food & Commercial Workers' International Union. In addition to holding these offices, Mr. Hershkovitz has been a Member of the Board of Referees of the Unemployment Insurance Commission since 1960 and for many years has acted as a union nominee on boards of arbitration.

#### OLIVER HODGES

Mr. Hodges has been a full-time Board Member representing labour since 1967. In 1943, he became the Representative and Director of Education, National Union of Shoe and Leather Workers, CCL. Between 1948 and 1950 he was a Representative of the CCF Labour Committee. In 1950 he became the Hamilton area representative to the Canadian Congress of Labour and he held this office until 1954, when he became the Canadian Director of the United Glass and Ceramic Workers of North America, CLC, AFL-CIO. Between 1965 and 1967 Mr. Hodges served on numerous conciliation and arbitration boards as union nominee. During the period 1943 and 1965, he was a candidate for the CCF and NDP in municipal, provincial and federal elections. Mr. Hodges retired from his position at the Board in August, 1982.

#### ROBERT D. JOYCE

Mr. Joyce has been a part-time Member of the Board representing management since September, 1977. He joined Canada Packers Limited in 1974 and became its Corporate Relations Manager in 1965. He was also elected to the Company's Board of Directors that year. During his career at Canada Packers, Mr. Joyce was actively involved in negotiation, conciliation and arbitration proceedings and also served on many boards of arbitration as employer nominee. Mr. Joyce has been called upon to serve on commissions and task forces appointed by governments on several occasions. As a member of the Canadian Manufacturers Association Industrial Relations Committee, Mr. Joyce has conducted many industrial relations seminars. He has also provided an employee relations consultation service for management for several years.

#### HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario, 1958-62; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and Member of the Advisory Council on

Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

#### BRUCE K. LEE

Mr. Lee has served as a part-time Board Member representing labour for the past three years. He was President of the UAW Amalgamated Local 252, Toronto, for 19 years. During that time, he served on various Union committees and delegations, both in Canada and the United States. In 1964, Mr. Lee was appointed to the UAW organizing staff.

#### STEPHEN H. LEWIS

Mr. Lewis was appointed as a part-time Board Member representing labour in 1979. Educated in the University of Toronto and the University of British Columbia, Mr. Lewis taught in Africa before entering politics in 1963. He was a Member of the Ontario Legislature from 1963 to 1977. During this time, he held the positions of Leader of the New Democratic Party of Ontario and Leader of the Official Opposition in the legislature. Since his retirement from active politics, Mr. Lewis has been engaged in a career as a columnist, broadcaster and lecturer. He has also been active in the trade union movement and is experienced in the arbitration process and other facets of collective bargaining. On several occasions he has been appointed to Disputes Advisory Committees under the *Labour Relations Act* as a representative of labour.

#### JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics and well as a M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second war War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies before becoming Vice-President of International Labatt Brewing Co. in 1979. He held this position until his retirement in January of 1982.

#### F. WILLIAM MURRAY

Mr. Murray was a part-time Member of the Board representing management from 1965 to February of 1980, when he assumed a full-time position on the Board. From 1948 to 1963, Mr. Murray was employed as the Manager of the Motor Transport Industrial Relations Bureau, which served as the labour relations representative for groups of companies in Ontario and Quebec. In 1963 he formed his own industrial relations consulting firm and was active in industrial relations consulting work for many trucking firms and related industries. Since 1971 Mr. Murray has been a Member of the Public Service Staff Relations Board. He is also a Member of the Board of Trade Industrial Relations Committee and the Personnel Association of Toronto.

#### PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britian and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe



was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of CUPE and presently holds the office of Ontario Regional Director of C.U.P.E., and Vice-President of the Ontario Federation of Labour.

#### ROBERT W. REDFORD

Mr. Redford has been a part-time Member of the Board representing management for the last four years. Having graduated from Queen's University with a degree of B.A. (Economics) in 1963, he joined Canada Packers Inc., where he worked for 16 years in the employment relations function. His final position at Canada Packers was Corporate Manager, Personnel Services. Mr. Redford is currently the Executive Directive of the Personnel Association of Toronto and the Personnel Association of Ontario.

#### JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and a LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

#### MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

#### WILLIAM F. RUTHERFORD

Mr. Rutherford has been a full-time Member of the Board representing labour for three years. He was the Houdaille Plant Chairman for the UAW for 37 years. He was a Member of the Oshawa District Labour Council between 1944 and 1977 and a Member of the Canadian UAW Council during 1948 and 1971. Mr. Rutherford has served on the Board of Referees of the Unemployment Insurance Commission for 12 years.

#### HARRY SIMON

Mr. Simon has been a part-time Board Member representing labour since July of 1974. He became actively involved in the labour movement in 1926. From 1943 to 1956 he was the Canadian representative to the American Federation of Labour. From 1958 to 1974, Mr. Simon was the Ontario Regional Director of Organization of the Canadian Labour Congress; he was also a Member of the Labour-Management Arbitration Commission from its inception in 1969 until its abolition in 1979. In addition to these appointments, Mr. Simon has served on various boards and commissions representing the Ontario Federation of Labour and the Canadian Labour Congress. In 1982, Mr. Simon retired from his position at the Board.



## INGE M. STAMP

Appointed a full-time Board Member representing management in August, 1982, Ms. Stamp comes to the Board with many years of experience in the personnel and labour relations field at Bechtel Canada Limited. Having joined that firm as Senior Secretary to the Vice-President of Labour Relations in 1969, Ms. Stamp became Administrative Assistant in 1974 and Labour Relations Assistant in 1975. In 1977 she was appointed labour relations representative, a post she held prior to her appointment to the Board. In this capacity, Ms. Stamp was appointed, by the Industrial Contractors Association of Canada, as a member of several employer bargaining agencies designated to negotiate collective agreements on behalf of management. Ms. Stamp has been very active in the functions of the Industrial Contractors Association of Canada and since 1979 has served as treasurer responsible for the General Funds and the Ontario Industry Funds. She has represented Bechtel Canada Limited at negotiations of the Boilermaker Contractors Association and annual conferences of the Canadian Construction Association.

## ROBERT J. SWENOR

Mr. Swenor was appointed as a part-time Board Member in February, 1982, to represent management. Mr. Swenor, who holds the degrees of B.A. and M.B.A. from McMaster University and a certificate in Metallurgy of Iron and Steel, has been employed with Dominion Foundries and Steel Ltd., Hamilton, since 1970 and is presently its Assistant Secretary. He is Vice-Chairman of the Canadian Manufacturers' Association Legal Advisory Committee on Environmental Law and also serves on the Legislation Committee, the Sub-Committee on Corporation Law and the Environment Quality Committee of that organization.

## E.G. (TED) THEOBALD

Mr. Theobald was appointed as a part-time Board Member representing labour in December, 1982. From 1976 to June, 1982, he was an elected member of the Board of Directors of O.P.S.E.U., and during this period served a term as Vice-President. Active in the trade union movement since 1971, Mr. Theobald has served as President and Chief Steward of a 600 member local union. He has served on numerous union committees and has either drafted or directly contributed to several labour relations related reports. He is experienced in the grievance procedure and arbitration. At present, Mr. Theobald is employed by George Brown College, as a teaching master in the Mechanical Design and Construction Department.

## W. H. WIGHTMAN

Mr. Wightman was first appointed to the Board 1968, becoming a full-time member in 1977, and resigning from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canadian Manpower and Immigration Council, the Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He was a founding member of the McMaster Medical Centre Advisory Council on Occupational Health and Safety. His writing credits include papers

presented at the World Employment Conference in Geneva and symposia at Vienna and Panama City. He is a graduate of Clarkson College (BBA'50) and Columbia University (MS'54) where he lectured while engaged in doctoral studies.

#### JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. He has been the Labour Relations Consultant to the Electrical Contractors Association of Ontario for the last 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association of Ontario, Charter Member of the Canadian Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

#### NORMAN A. WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of the Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.



**Executive Board Room**

## STAFF DEVELOPMENT

In an effort to maintain a continuing rapport between the Board and the industrial relations community and to keep the Board and its staff abreast of current thinking within the labour relations community, the Board met with several employer and trade union organizations and members of the practising bar during the past year. In addition, Board staff members attended labour relations conferences on a regular basis. Several members of the Board and the Chief Programme Development presented papers at conferences in San Francisco, New York and Hull, Quebec.

A day long seminar was organized for the Vice-Chairmen of the Board to reflect upon the Board's efforts at fulfilling its mandate under the Act and to examine possible means of making procedural improvements. The seminar was addressed by key-note speaker, Prof. David M. Beatty, who spoke on "Bargaining Unit Configuration." The seminar was also addressed by Ian Scott, Q.C. of the Toronto law firm of Cameron, Brewin and Scott; his topic was "Judicial Review of Labour Board Decisions."

The Board also held a day-long seminar for its field officers. The seminar on "Dispute Resolution Methods" was conducted by Professor Brian Downey of the Queen's University School of Business.

The Board actively participated in a seminar devoted to examining certification and unfair labour practice proceedings before the Ontario Labour Relations Board entitled "Organizing the Non-Union Company", sponsored by the Law Society of Upper Canada. The Senior Solicitor acted as Planning Assistant and was involved in the preparation of the written materials used by the participants. The Senior Solicitor, Solicitor Registrar, and Manager, Field Services, together with members of the field staff served as resource persons at the study sessions.

During the year, the Senior Solicitor of the Board conducted two seminars for the Board's support staff dealing with Board's function under the *Labour Relations Act*.



## V. HIGHLIGHTS OF BOARD DECISIONS

### **Timing of Ratification Vote to Avoid Termination Application Is Lawful**

A termination application combined with an unfair labour practice complaint was filed by a group of employees. The latter alleged the violation of the rights of the complainants with respect to strike and ratification votes, and that voters were coerced into ratifying a collective agreement. The complainants sought to adduce evidence of a termination petition to establish that at the time of the ratification vote, the union did not have the support of the majority of the employees.

The question here was whether the union deliberately manipulated the ratification and strike vote procedures to intimidate and coerce employees into accepting a collective agreement, in order to avoid the timely filing of a termination application.

The Board found that there was nothing unlawful about a union planning and timing the ratification and strike votes in order to maximize its own protection against termination applications. It was irrelevant whether, at the time of the conduct of the votes, the union did not enjoy the support of the majority of employees. The issue was whether the union had conducted itself in an unlawful manner. On the evidence the Board held that the union had not. The refusal by the union to permit the complainants to have their counsel at a union meeting called to explain the tentative agreement was not unlawful. A union is entitled to restrict its meetings to employees. The Board voted that if different groups of employees brought their own counsel to union meetings, the union's affairs would come to a standstill. There was ample opportunity given to employees at the meeting and there was no evidence that they were deprived of their freedom of choice at the vote. Because the section 89 application failed, the ratification of the agreement was valid and the subsequent termination application was untimely. (*Beatrice Foods (Ontario) Limited*, [1982] OLRB Rep. Apr. 519.)

### **Sub-Contracting Not a Sale of a Business**

Molson's had a hospitality room at its brewery premises. This room was demolished and replaced by a new expanded hospitality room which was to provide services of a higher quality and sophistication. As part of this upgrading, the food catering and supply of hostesses for the new facility were contracted out to two independent agencies. The applicant trade union, which held bargaining rights for the employees in the old hospitality room, claimed that there was a sale of a part of a business within the meaning of section 63 of the *Labour Relation Act*, between Molsons and the sub-contractors or alternatively that Molsons and the sub-contractors were related employers within the meaning of section 1(4) of the Act.

It was found that there had been no sale. The business of operating the hospitality room was not transferred to the sub-contractors. Molsons still ran the business although it has engaged the sub-contractors to run it better. Nor are the sub-contractors related employers. While some sub-contracting arrangements may be characterized as joint ventures and therefore falling within section 1(4), that was not the case here. The sub-contractors are independent agencies, with their established employee complement, operated for the benefit of their specialized services to a variety of purchasers of which Molson's was only one. (*The Charming Hostess Inc.*, [1982] OLRB Rep. Apr. 536).



### **Discipline Imposed on Designated “Competent Person” Unlawful Under the *Occupational Health and Safety Act***

The complainant, an employee of the respondent employer was appointed as a “competent person” under the provisions of the *Occupational Health and Safety Act*. In that capacity, it was his responsibility under the regulations, to inspect and certify the work area as safe. The complainant felt that the sandblasting procedures adopted by employees of a sub-contractor were unsafe and despite demands by management refused to certify the work area as safe. The employer, who disagreed that the area was unsafe wrote a disciplinary letter to the complainant. The complainant complained that he was disciplined for his exercise of rights under the Act.

The Board found that the complainant’s belief that the work area was unsafe was held in good faith. Since he was discharging his responsibility under the Act in refusing to certify the work area as safe, the imposition of discipline was contrary to the Act. (*Imperial Oil Ltd.*, [1982] OLRB Rep. Apr. 580).

### **Employer Entitled to Request Expedited Arbitration**

The employer requested the Minister to appoint an arbitrator under the expedited arbitration provision section 45 to hear a discharge grievance filed by the union. The Minister referred the question, as to whether he had the authority to make the appointment at the employer’s request, to the Board under section 107. The union objected, stating that only the grieving party has access to the expedited arbitration procedure.

The purpose of the section was to provide a less costly and time consuming procedure to obtain arbitration. There was no policy reason to limit access to this procedure to the grieving party. While the statutory language is not as clear as one would desire it to be, the Board preferred an interpretation which would allow access by either party to the collective agreement. (*Marshall Gowland Manor*, [1982] OLRB Rep. May 707).

### **Union Not Required to Involve All Employees in Organization Campaign**

During the drive to organize a union, meetings were held to which, it was alleged, certain employees known to be against the union were not invited. The Board found it unnecessary to assess conflicts in the evidence concerning whether these employees were invited. Refusal to invite or to permit attendance by all employees in the proposed bargaining unit at an organizational meeting neither violates the Act nor provides a basis for setting aside a representation vote. Organizers are no more required to invite every potential bargaining unit member to an organizational meeting than they are to approach every employee and invite him or her to join the union.

Further, the presence of the union’s agent for the count at the respondent’s premises on the afternoon of the pre-hearing representation vote did not destroy the secrecy of the ballot or create a situation in which the vote would be unlikely to disclose the true wishes of the employees. His arrival prior to 4:15 p.m. was quite reasonable in view of the Officer’s suggestion that the polling booth might be closed before 4:15 if all eligible employees had voted. Also his presence outside the polling area prior to the closing of the poll could not have affected the validity of the vote in any way since no one cast a ballot during that interval. Thus the Board declined to direct that a further representation vote be taken. (*Windsor Machine & Stamping Limited*, [1982] OLRB Rep. May 791).

### **Counter-Petition Relevant on Termination Application**

An application for a declaration terminating the union's bargaining rights was filed with an accompanying petition bearing the signatures of more than 45% of the employees in the bargaining unit. A counter-petition was also filed containing many of the names that were on the petition.

The applicant and the company argued that the counter-petition was irrelevant to the issue before the Board under section 57(3) of the Act and submitted that once there was a petition of opposition to the union containing the names of not less than 45% of the employees in the bargaining unit, the conditions of section 57(3) were satisfied and the Board must order a vote. The Board rejected this argument, pointing out that its duty was to determine the wishes of the employees as of the terminal date. Therefore a counter-petition filed after a petition but before the terminal date was relevant to this issue. In dealing with the problem of conflicting statements of desire in a termination application the Board reiterated its policy of accepting the last voluntary statement filed before the terminal date as the most reliable indicator of employee wishes. (*Browning-Ferris Industries*, [1982] OLRB Rep. June 816).

### **Successor Employer Not Bound by Remedial Orders Issued Against Predecessor**

The union applied for a declaration that a sale of a business had occurred, or that the employer and its predecessor were related. The predecessor employer had earlier been found guilty of various unfair labour practices and had been ordered by the Board to compensate several employees. The union sought an order requiring the successor employer to comply with the order issued against its predecessor.

The Board dismissed the related employer application on the grounds that section 1(4) was intended only for purposes of preserving bargaining rights and not for enforcement of remedies. A sale of a business was found to have taken place but the Board concluded that the Act does not make a bona fide purchaser of a business responsible for the unfair labour practices of the vendor. (*Chandelle Fashions*, [1982] OLRB Rep. June 828).

### **Successor Employer Bound by Collective Agreement Entered Into by Predecessor Employer Three Weeks Before Sale of Business**

A union applied under section 63 of the Act for a declaration that there had been a sale of a business and that the respondent employer was therefore bound by the collective agreement between it and the predecessor employer.

The respondent employer had acquired a drug store franchise from the predecessor employer whose franchise agreement had been unilaterally terminated by the franchise chain owner. The franchise chain's policy was to terminate the employment of all employees at a franchise store when that store changed hands. Consequently the employees of the store were anxious about their job security and decided to seek union representation.

Three weeks before the transfer of the franchise, the predecessor employer entered into a three year collective agreement with the union, which agreement was very favourable to the employees represented by it. The predecessor employer, although advising the franchise chain owner, did not notify the respondent of the negotiations or the collective agreement which resulted. Shortly thereafter, the predecessor employer opened his own drug store in direct

competition with the respondent. The respondent argued that there had been no “sale” of a “business” within the meaning of section 63 and that in any event the agreement by the predecessor employer was void because of employer support in violation of sections 13 and 48 of the Act.

The Board found that there had been a sale of a business from the predecessor employer to the respondent. It also rejected the respondent’s argument that the agreement was void for violation of section 48. The union had merely been the innocent beneficiary of the predecessor employer’s hostility towards the franchise chain owner and had not received any illegal support from the predecessor employer. It was not the Board’s function to review the reasonableness of the terms of collective agreements. The predecessor employer owed no duty under the Act to act honestly or in good faith towards the respondent and therefore the respondent could not seek relief before the Board. The Board also noted that it has no general discretion to declare collective agreements inoperative. (*John Lester Drugs Ltd.*, [1982] OLRB Rep. June 886).

### **Extent of Employer’s Duty Under Statutory Dues Checkoff Provision**

Further to the statutory compulsory dues checkoff provision, the employer submitted a lump sum of money deducted from employees without any breakdown or identification of those employees. The union alleged that this was a breach of the Act and requested a breakdown while the employer contended that such action were not required but rather were matters to be negotiated.

The Board found that there was no legitimate business purpose for the employer’s position and that it was merely trying to hinder the union. The statutory checkoff amendment was passed to remove that item from the bargaining table and to avoid strikes over the issue of union security. In view of the background and purpose of section 43, the Board held that to deduct dues from each employee carries with it the obligation to disclose the identity of those employees paying and those in arrears. (*K-Mart Canada Limited*, [1982] OLRB Rep. June 903).

### **Board Using Discretion Not to Make Declaration of Related Employer**

The production employees of Ethyl Canada were represented in collective bargaining by the applicant. Ethyl Canada had a longstanding practice of sub-contracting work to FIRM, a mechanical contractor. A number of reasons for using outside subcontractors rather than its own forces were advanced by Ethyl, all relating to economy and efficiency. Ethyl asserted that its relationship with FIRM was not much different from that of various subcontractors with which it dealt from time to time, and that there was no basis for granting a section 1(4) declaration. The union argued that the section 1(4) requirements were met and that a declaration was necessary in order to prevent an erosion of the union’s bargaining rights and work jurisdiction.

The Board stated that while the language of section 1(4) is very broad, it was not intended to apply in every case which in a general or linguistic sense meets its statutory criteria; the Board has a discretion concerning the application of section 1(4). While the Board accepted that there may be cases characterized as “subcontracting” which would be susceptible to the application of 1(4), it was not satisfied that this was one of them, or that if it was, that the Board should exercise its discretion to make a declaration. In this case the applicant’s members did not have an unequivocal claim to the work in question. In addition there were none of the traditional indicia of common control or discretion.



Finally, the union had delayed in bringing the application. Having regard to the totality of the evidence, the Board was not persuaded that a section 1(4) declaration was warranted. (*Ethyl Canada Inc.*, [1982] OLRB Rep. July 998).

### **Union Withdrawal of Objection to Employee Inclusions in Unit After Release of Count Permitted**

In an application for certification the union altered its position concerning the employee status of a number of persons in dispute. Originally, the employer asserted that two disputed employees came within the proposed bargaining unit. The union challenged their inclusion. The withdrawal of that challenge was made after the employee count was released at the examiner hearing. Initially, the employer did not object to the union's change of position but subsequently an objection was registered. The employer also purported to agree with the union's original position. Thus, it then became the submission of the employer that the two employees in question should be excluded from the bargaining unit. Counsel for the employer asked the Board to exclude the disputed employees from the bargaining unit on the basis that once the union had asked for them to be excluded, it could not subsequently agree to have them included.

The Board heard extensive argument from the parties on whether the union should be permitted during the examinations, and therefore after the release of the membership count, to alter its position on the status of two persons in dispute and agree with the respondent. Citing the Board's decision in *Santa Maria Foods*, [1981] OLRB Rep. Nov. 1618, the employer expressed the concern that to allow the union's withdrawal would be to condone gerrymandering by the union.

The Board held that the union's withdrawal of its challenge was not an attempt to gerrymander the employee list or the structure of the bargaining unit and did not fall within the mischief described in *Santa Maria Foods*. At the time of the union's withdrawal of its challenge to the inclusion of the two people in the unit, an interim certificate had issued, a statement of desire against the union by the individuals had been dismissed, and the union's representation rights were not in any way affected by the inclusion or exclusion of the employees. The Board therefore confirmed the position originally taken by its officer to allow the union to withdraw its challenge to the inclusion of the two employees in the unit and to agree with the position of the employer as it stood at that point so that the individuals in dispute came within the bargaining unit. On the basis of all these considerations the Board concluded that the individuals in question were employees within the bargaining unit and a final certificate was issued. (*Rheem Canada Inc.*, [1982] OLRB Rep. July 1060).

### **Board Rejects Viva Voce Evidence from Employees Concerning Effect of Employer Misconduct**

In a certification application by Teamsters Local 938 involving two employees, section 8 was invoked. The Board found that there had been a flagrant breach of the Act by the employer. However, the employer took the position that its misconduct would not prevent the true wishes of the two employees in the unit from being disclosed by a vote in the particular circumstances. The evidence established that one of the employees had always been a strong union supporter while the other was strongly opposed to the union. Thus, the employer argued that nothing it did could affect the way each of them would vote.

It is established policy, the Board concluded, that it will not hear viva voce evidence from individual employees as to the impact on them of the employer's unlawful conduct. There is no certainty that at the time of voting the employer's conduct would not affect the union supporter.



The Board held that the employer's unlawful conduct took away any chance the union may have had in persuading the union opponent to its side. Therefore, the requirement for a certificate without a vote was satisfied. (*Brinks Canada Limited*, [1982] OLRB Rep. Aug. 1140).

### **Employer Paying the Legal Costs of an Employee Petitioner Improper**

The applicant seeking termination of bargaining rights had previously sponsored a petition against a different union in a certification proceeding. The Board found on the evidence that the employer had paid the legal fees incurred by the applicant in respect of the petition in the certification case. However, the Board found that there was no pre-arrangement with the employer to pay those legal fees but that it had been done *ex post facto*. Evidence also disclosed that a number of employees knew that the employer had paid the legal fees of the petitioner in that earlier proceeding.

The issue before the Board was whether the petition sponsored and filed by the applicant in support of a termination application disclosed the voluntary wishes of the employees. The Board reviewed the various provisions of the Act which prohibit interference in or support for, trade unions by employers. The Board stated that the employer's act can only be seen as a reward for the anti-union efforts of the applicant employee. The fact that the payment was not pre-arranged does not change the quality of the employer's conduct. First, it has an obvious impact on the on going relationship between the applicant employee and the employer. Second, it will have an impact on other employees when that knowledge reaches them, since they would have reason to believe that as a general matter anti-union efforts will be rewarded by the employer. In the circumstances, the Board did not accept the petition in question as voluntary and the application was dismissed. (*Empco-Fab Ltd.*, [1982] OLRB Rep. Aug. 1162).

### **Persons Employed as Participants in a Government Funded Rehabilitation Program "Employees"**

An application for certification was opposed by the employer on the ground that the persons affected were not its employees, but participants in a rehabilitation program funded by government to stimulate employment. While the wages of these persons came out of government funds, C.P.P., U.I.C., and income tax deductions were made in the same way as the respondent's other employees. The respondent argued that the usual machinery and sanctions of collective bargaining were very difficult to reconcile with the nature of the program, and that the Board should find these persons not to be "employees" for purposes of the Act.

The Board held that it attaches little significance to the fact that the program was a publicly funded "make work" project. The adversarial model of collective bargaining was not easily applicable to the relationship here which was not that of typical employer/employee. Even though the persons were on the periphery of the Act's coverage, the Board held that it must find the persons to be employees since the cumulative evidence indicated an employment relationship and the contrary indications were insufficient to alter that conclusion. (*Regional Municipality of Hamilton-Wentworth*, [1982] OLRB Rep. Aug. 1179).

### **Gross Negligence Breach of Section 68**

An employee filed a complaint under section 68 of the Act alleging that the union had acted in an arbitrary manner while handling a grievance. The employee had been discharged and evidence showed that the shop steward had led him to believe that there would be no problem if

the grievance was filed at a later time. The employee complained that as a result of being misled in this manner his grievance was denied for procedural defects and was not considered on its merits. The union argued that the late filing of the grievance had no adverse impact on the employee because after reviewing the merits of the grievance, the union decided not to proceed to arbitration in any event.

The Board, discussing the union's duty under section 68, stated that the union is not required to be correct in every step it takes on behalf of an employee. Moreover, mere negligence on the part of a union official does not ordinarily constitute a breach of the Act. There comes a point, however, when mere negligence becomes gross negligence and when gross negligence reflects a complete disregard for the critical consequences to an employee then that action may be viewed as arbitrary for the purposes of section 68. In the Board's opinion the union's communication to the employee on the matter of the timing of his grievance constituted such disregard for its natural adverse consequences that it had to be viewed as gross negligence constituting arbitrary conduct within the meaning of section 68. In addition, the union's later consideration of the grievance as being unworthy did not rectify the initial breach of the Act. The parties were ordered to bring the matter to arbitration. (*North York General Hospital*, [1982] OLRB Rep. Aug. 1190).

#### **Board Not Allowing Further Hearing After Allegations Withdrawn**

Counsel for the complainant informed the Board at the commencement of the hearing that the initial complaint against his union alleging a breach of section 80 was to be disregarded and that the complaint was to be treated only as alleging a breach of sections 3 and 70. The case was heard on that basis. Following this, the Board received a letter from the complainant's counsel requesting the Board to find a violation of section 80, either based on a new hearing or on written submissions. The Board found that there was nothing to justify the granting of such a request. If the matter were re-opened, new issues would be raised, witnesses would have to be re-examined, and new witnesses questioned. Since no new facts had come light and counsel had stated earlier that no violation of section 80 was being alleged, only the complaint under sections 3 and 70 would be considered.

The facts of the sections 3 and 70 complaint were that the complainant had been fined by his union for supporting a rival union's certification application. The Board held that section 3 was only declaratory. Section 70 related to intimidation and coercion but there was no evidence of any attempt by anyone connected with the union to prevent the complainant from being a member of the displacing union. The fine was not imposed on the complainant for having exercised his rights under the Act. In short, the evidence did not disclose intimidation or coercion, and the imposition of a penalty itself was not intimidation or coercion. (*Tim Reay*, [1982] OLRB Rep. Aug. 1206).

#### **Telephone Calls Prior to Representation Vote Not a Breach of the Silent Period**

The employer challenged a representative vote on the ground that the Registrar's direction to refrain and desist from propaganda and electioneering prior to the vote had been violated. Two union representatives had called union members during the silent period, one seeking information about a meeting with management and the other asking whether the employee had voted. Three other anonymous telephone calls were received by employees, two telling them to vote for the union and a third to get out and vote.

The Board found that the first call was neither propaganda nor electioneering. The second call standing alone was not cause enough to negate the election. The anonymous calls were a form

of electioneering, made for the purpose of attempting to influence the outcome of the vote. However, these were not sufficient to cause the Board to disregard the vote. The Board was satisfied that the union had taken reasonable precautions to avoid breaches of the Registrar's direction by persons beyond its direct control. Two of the anonymous calls were only isolated infractions. The Board was not satisfied that the calls were likely to have influenced the outcome of the vote. A certificate was issued. (*Tops Food Market*, [1982] OLRB Rep. Aug. 1216.)

### **Air Freight Forwarding Within Board's Jurisdiction**

The employer objected to the Board entertaining the union's application for certification on the grounds that its business, air freight forwarding, was outside of the constitutional jurisdiction of the Board. The exclusive business of the employer was forwarding air freight to destinations in other provinces and the United States. The employer submitted that it was so involved in interprovincial and international air transport as to be an integral part of the airline industry and therefore under federal jurisdiction.

The Board found that the employer was engaged by its own customers and not the airlines. It did not provide a service that the airlines themselves provided and as such could not be said to be an essential or integral part of interprovincial or international air transportation. After reviewing a number of constitutional law decisions, the Board determined that air freight forwarding is a purely local undertaking within the meaning of section 92(10)(a) of the *British North America Act* and thus found that it had jurisdiction to deal with the application. (*Airgo Agency Limited*, [1982] OLRB Rep. Sept. 1233).

### **Employer Not an "Ally"—Picketing Unlawful**

A lawful strike had commenced against four carton manufacturers. The customers affected by the strike increased their purchases from the applicant company. In normal times these large volume purchasers were customers of all five companies. The unions engaged in the strike against the four companies took the position that "struck work" was being performed by the applicant company and established picket lines at four of the applicant company's plants. The picket lines were honoured by the applicant's employees. The applicant sought a cease and desist order with the respect to the picketing.

It was submitted that the picketing was protected under the Act as being "in connection with" a lawful strike; that the applicant was "allied" with the struck employers since it was doing their work, would benefit from a lower settlement, and was allegedly, part of a common employer front. The unions also submitted the employer was obligated to seek relief in the courts.

The Board carefully reviewed the relevant sections of the *Labour Relations Act*, section 20 of the *Judicature Act* and the related jurisprudence, noting the restraints on court jurisdiction over picketing and the expansion of Ontario Labour Relations Board remedial powers. The Board specifically addressed itself to sections 74 and 76(2) to determine whether the picketing in question was "in connection with" a lawful strike and whether the applicant had allied itself with the struck employers or was, instead, wholly neutral. On the particular facts, the Board concluded that the applicant was not an ally of the struck employers; and the picketing was not in connection with a lawful strike within the meaning of section 76(2). The picketing was therefore held to be unlawful. An order was issued directing a union official and other persons having notice of the order to cease and desist from maintaining a picket line or picketing at the premises of the applicant. (*Consolidated-Bathurst Packaging Limited*, [1982] OLRB Rep. Sept. 1274).



### **Board Refuses to Award Punitive Damages**

The United Steelworkers alleged that the respondents bargained in bad faith, bargained directly with employees, interfered with the administration of the union, and otherwise violated the Act.

The Board found that the respondents contravened section 15 of the Act by refusing to disclose to the union the actual wage rates of their respective bargaining unit employees. The Board indicated that one of the principal functions of the duty described in section 15 is to foster rational, informed discussion. In this case the union would not have been able to appraise accurately the actual value of the respondents' offers without knowing the employees' existing rates. In addition to the contravention of section 15, the respondents contravened section 67(1) by bargaining directly with some of the employees whom the union was entitled to represent. Their conduct went far beyond the ambit of the employer's right of freedom of expression guaranteed by section 64.

To remedy these contraventions, the Board ordered the respondents to cease and desist from contravening the Act but declined to grant damages in the circumstances of the case. Neither the union or the employees suffered any actual monetary losses as a result of the contraventions. Also, there was no evidence that the employer's actions permanently weakened the employees' determination to obtain improved conditions of employment. Furthermore, it appeared to the Board that what the union was actually seeking was punitive damages, rather than compensatory damages of the type usually awarded by the Board. The imposition of penal sanctions is not for the Board, but rather must be sought through prosecution in the criminal courts. (*Globe Spring & Cushion Co. Ltd.*, [1982] OLRB Rep. Sept. 1303).

### **Arbitrary Union Conduct Contravening Duty of Fair Referral**

In a complaint of unfair referral under section 69, the evidence showed that an employer had written to the union stating that the complainant was not suitable for the type of work involved in the industry. The letter was very general and lacked any specific allegation of incompetence. The union thereupon refused to refer the complainant to other work. In defence of its position, the union raised other complaints from other companies but no evidence was led to prove these. On the other hand, there was evidence that the complainant had worked for another employer with no complaints.

The Board held that the refusal by the union to assign the complainant to future work through the hiring hall was arbitrary and contravened the duty of fair referral. The collective agreement provided for testing of probationary employees but this was not done in this case. The union's acceptance of the employer's vague evaluation without investigation was held to be arbitrary. (*Michael Shaw*, [1982] OLRB Rep. Sept. 1339).

### **Board Procedure in the Face of a Voluntary Petition and a Voluntary Counter-Petition**

In a previous decision the Board had issued a certificate to the applicant trade union without a representation vote. The Board had refused to inquire into the origination and circulation of a petition, because of the presence of a subsequent relevant voluntary counter-petition. On judicial review, the Divisional Court found that the Board had committed a jurisdictional error by refusing to hear evidence relating to the petition in exercising its discretion as to whether a vote should be



directed. The Board's decision was quashed and the matter was remitted to the Board for a de novo hearing before a differently constituted panel. An appeal to the Court of Appeal was dismissed and leave to appeal to the Supreme Court of Canada was refused.

When the matter was considered again by the Board, it found that the counter-petition was voluntary. With respect to the petition, however, the Board found that it could not be relied upon as a voluntary expression of employee wishes because of communication by a collector to a number of employees that his lawyer had been suggested by the employer.

The Board went on to state that even if it had been satisfied the petition was a voluntary expression of employee wishes, it was difficult to make any meaningful comparison between the petition and counter-petition and it would be arbitrary to direct a vote because of the mere existence of two apparently conflicting documents. The Board held that, while the Divisional court's comments must be given careful consideration, it was more consistent with the scheme of the Act to principally have regard to the employees' last voluntary statement prior to the terminal date. The Board held that, while there may be exceptional situations, generally its experience shows that in the face of a voluntary counter-petition, a voluntary petition will not be sufficiently probative to the exercise of the Board's discretion to merit an inquiry into the petition's origination and circulation. (*Baltimore Aircoil Interamerican Corporation*, [1982] OLRB Rep. Oct. 1387).

### **Grievor Being Denied Own Counsel at Arbitration Not a Breach of the Duty of Fair Representation**

The complainant alleged that he had been dealt with by the respondent union contrary to section 68 of the Act. By the time the complaint was filed there had been numerous arbitrations and court proceedings concerning the complainant's dismissal from employment. It was alleged that the grievor had not been permitted to be present at settlement discussions and had been denied the right to have his own legal counsel. In addition, he complained that the union refused to initiate judicial review proceedings subsequent to an arbitration hearing.

On the basis of the totality of testimony the Board did not find the complainant's evidence to be credible. In addition, it found no malice on the part of the union; the union officials did their best to deal with a difficult situation. The Board found no breach of the Act in the way in which the complainant was represented. The failure to provide independent counsel was not a breach of section 68 anymore than the union's failure to join in the application for judicial review. It is not arbitrary if a union decides to follow its established practice and handle grievances with its own officials. The complaint was dismissed. (*Chrysler Canada Limited*, [1982] OLRB Rep. Oct. 1417).

### **Whether One Year Bar Runs from Date of Interim or Final Certificate**

The respondent union had received interim certification on May 25, 1981, with the final certificate issued on June 30, 1981. A termination application was filed on June 9, 1982. The issue raised was whether the period of one year after certification referred to in section 57(1)—the time bar for a termination application—is to be calculated from the date of interim certification or from the date on which the certificate issues.

The Board agreed with the submission of the respondent union that the year-long bar in section 57(1) runs from the date of final certification rather than interim certification and therefore the termination application was untimely.

In reaching this conclusion, the Board considered the various policy considerations underlying the issue before it. It emphasized that a union's bargaining rights are not fully effective until the final certificate is issued and that a union should have a full year to reach a collective agreement or for bargaining rights to become fully established. The Board also considered various other sections of the Act which deal with time limits from the date of certification in order to support its interpretation of section 57. (*Comstock Funeral Home Ltd.*, [1982] OLRB Rep. Oct. 1436).

### **Duty to Bargain With Incumbent Union While Displacement Application Pending**

This was a displacement certification application whereby the applicant sought certification without a vote on the basis of membership support in excess of 55%, or in the alternative, under section 8. For the latter, reliance was placed on employer unlawful conduct including lay-off of union supporters and the carrying on of negotiations and the entering into of a collective agreement with the incumbent union, in the face of the applicant's application for certification. The applicant argued that the statutory freeze imposed by section 79(2) precluded the negotiation and signing of a collective agreement after its application for certification had been made, and also that these negotiations were carried out with the purpose of making it appear that a significant improvement in terms and conditions had been effected by the incumbent. It was argued that in doing so, the employer was unlawfully interfering with the applicant union's activities.

The Board noted an apparent conflict between the duty to bargain in section 15 and the statutory freeze of wages and terms and conditions of work in section 79(2). Unless the latter is said to qualify the bargaining duty, an employer refusing to bargain with an incumbent union may face a complaint of bad faith bargaining. In the absence of express statutory provision dealing with the issue, the Board carefully reviewed the practical labour relations considerations inherent in the position submitted by the applicant.

The Board noted that despite the freeze imposed by section 79(2), the Act restricts displacement applications to the last two months of the operation of the incumbent's collective agreement and that under section 56(1), the incumbent continues to represent the employees, and its collective agreement continues to operate, until the applicant union is certified. The Board held that in these circumstances, it is doubtful that section 79(2) operates to modify the duty to bargain.

The Board pointed out that even if it could be argued that section 79(2) somehow modified the bargaining duty, it is inconceivable that the legislature intended to place the applicant in the preferred position of regulating changes in wages and other terms and conditions of work, and by implication, to have modified the bargaining duty between the employer and the incumbent. The Board pointed to section 63(9) of the Act, which exempts the application of the duty to bargain upon the occurrence of a sale of a business. In the absence of a similar provision exempting employers facing displacement applications, the Board refused to read such an intention into the Act.

The Board pointed out a further shortcoming in the applicant's argument. Even if section 79(2) is said to suspend the bargaining duty, the incumbent's right to seek conciliation and reach a strike position continues. The Board stated that it is not conceivable that the Act would allow a legal strike at a time when the duty to bargain was not in effect. The Board concluded that in the circumstances of a displacement application where the incumbent has given notice to bargain and

in the face of the language of section 79(2), which freezes not only terms and conditions of employment but also any “duty” of the employer, it is the duty to bargain which is preserved.

Taking into account these practical labour relations considerations the Board concluded that the duty to bargain is not in anyway modified by the filing of a displacement certification application. The Board cautioned, however, that the duty on the employer is to bargain as he would have in the absence of a displacement application and stated that the employer could not use the duty to bargain to effect an unlawful purpose (i.e. interference with the right of employees to select a bargaining agent). While it was found that the lay-offs in question were unlawful, the Board affirmed its long-standing policy of recognizing a presumption of continuing majority support for an incumbent union and directing a vote in displacement applications. The Board stated that it would only certify without a vote and thereby penalize an incumbent, where there has been collusion between the incumbent union and the employer. In the absence of evidence of any collusion, the Board directed the taking of a representation vote. The Board stated that, where the employer’s unlawful conduct works to the benefit of the incumbent, the Board is able to exercise its remedial authority in favour of restoring the applicant to the position it would have been in, had there been no violation of the Act.

In exercising its remedial authority in this case the Board gave the applicant an option of relying on the vote already held or requesting a new vote. In the event the applicant opts for a new vote the Board stated that it would direct the respondent to post and to mail notices to each bargaining unit employee and provide the applicant with the last known home address of each employee. Finally in the exercise of its remedial authority the Board advised, having regard to the lay-offs, that if the applicant opts for a new vote it will be a mailed ballot vote. (*Crowle Electrical Limited*, [1982] OLRB Rep. Oct. 1458).

### **Trusteeship Contravenes Section 80**

A complaint was filed by several Ontario Locals of the respondent international union and the business representatives of the complainant locals, alleging that the respondent had imposed a trusteeship on the Ontario District Council of the union in order to penalize the complainants because they filed, or were about to participate in an earlier unfair labour practice complaint (the “EPSCA complaint”) filed against respondents which included the international. The respondent argued that the trusteeship had been imposed in response to financial mismanagement and other deficiencies in the internal operations of the district council and had nothing to do with the earlier complaint.

On the evidence before it, the Board found that the trusteeship was partially motivated by a desire to penalize the complainant business representatives for filing or pursuing the EPSCA complaint. However, the Board also found that the trusteeship was partially motivated by legitimate concerns about the internal operations of the district council. Applying the “taint theory” to these findings, the Board held that the respondent international had contravened section 80(2) of the Act. However, the Board declined to direct the international to rescind the trusteeship. Being of the view that the co-existence of legitimate reasons for the respondent’s impugned conduct was relevant to the issue of the appropriate remedy, the Board allowed the trusteeship to stand but restored the status quo ante with respect to the EPSCA complaint by ordering the international to put the district council back on the record as one of the complainants in those proceedings and by ordering it to allow the complainant business representatives to continue to instruct counsel concerning the EPSCA complaint on behalf of the district council, notwithstanding the trusteeship. The Board also ordered the respondent to make



the district council funds available for payment of legal and other legitimate expenses pertaining to that complaint, incurred by district council, or by the complainant business representatives on behalf of the district council. Finally the Board ordered the respondent to expeditiously correct the irregularities in the operation of the district council and to remove the trusteeship as quickly as practicable. (*The International Association of Bridge, Structural and Ornamental Ironworkers, Norman Wilson, and James Phair*, [1982] OLRB Rep. Oct. 1487).

### **Section 80 Protection Extending to Arbitration Hearings**

In a section 89 proceeding, the complainant submitted that a managerial employee had been terminated because she had testified at an arbitration hearing in connection with a grievance filed on behalf of an employee. The complainant contended that the termination violated several sections of the Act, including section 80(1). The employer contended that the phrase “proceeding under this Act” as used in section 80 should not be interpreted to include a hearing before a sole arbitrator or board of arbitration, and that, accordingly, the section could not apply to the dismissal.

After discussing the compulsory nature of arbitration provisions contained in the Act, the Board found that an arbitration board is a tribunal established under the *Labour Relations Act*. If a board of arbitration, and by analogy a sole arbitrator is a statutory tribunal constituted under the Act, then a hearing before a board or arbitration or sole arbitrator must be a “proceeding under the Act”. This being the case, the Board was satisfied that persons who testify at an arbitration hearing are protected against reprisals for having done so by section 80 of the Act. (*Ontario Nurses’ Association*, [1982] OLRB Rep. Oct. 1546).

### **By-Law Enforcement Officers Not Members of Police Force**

The union applied to be certified as the bargaining agent on behalf of by-law enforcement officers in the City of Thunder Bay. The officers, employed by a security firm, spent most of their time enforcing parking by-laws by issuing parking tickets when warranted. The respondent company claimed that the by-law enforcement officers were members of a police force and thus excluded from the operation of the *Labour Relations Act*.

The Board held that the officers in dispute were not members of a police force within the meaning of the *Police Act* and thus constituted a unit of employees appropriate for collective bargaining under the *Labour Relations Act*. Section 15 of the *Police Act* requires that members of the police force be appointed by a board of commissioners of police. However, the enforcement officers before the Board were not appointed by a board of commissioners of police but were hired by the respondent company. The Board went on in its decision to cite numerous sections of the *Police Act* which supported the conclusion that the by-law enforcement officers were not members of the police force. A certificate was issued to the applicant union. (*Phillips Security Agency Inc.*, [1982] OLRB Rep. Oct. 1549).

### **Right of a Displacing Union to Grieve Under Predecessor Union’s Last Collective Agreement**

An employee association had held bargaining rights for the employees of the respondent for several years, and had concluded several successive collective agreements. On March 1, 1982, the complainant union applied for certification seeking to displace the incumbent and was successful, a certificate issuing in its favour on April 13, 1982. In the meantime, on April 1, 1982, the outgoing union’s last collective agreement expired. The complainant gave notice to bargain on May 27, 1982.



On May 21 and May 22, 1982 (i.e. subsequent to the filing of the application for certification but prior to giving of notice to bargain) the complainant filed two grievances, relating to attendance bonus and overtime respectively. The employer refused to appoint a nominee to a board of arbitration, taking the position that the grievances were not arbitrable. On June 15, 1982 (i.e. subsequent to its notice to bargain) the complainant filed a third grievance relating to wages for lost time to members of the negotiating committee. This grievance was not accepted by the employer. The complainant alleged a breach of the freeze provisions of the employer's nominee and requested that the Board sit as arbitrator. It was further requested that the Board hear the allegation of breach of the freeze provision.

The Board noted that upon notice to bargain being given, section 79 (1) freezes the collective bargaining relationship in the widest possible terms including the right to grieve and proceeding to arbitration. The freeze imposed upon the filing of a certification application, on the other hand, is narrower and merely freezes the terms of the individual contracts of employment, for no collective bargaining relationship existed at the time. Thus in the usual case only the third grievance would have been grievable, since the other two arose prior to the notice to bargain and therefore fell only within section 79(2), and not section 79(1). Since arbitration provisions are not matters of individual employment, the right to arbitration is not frozen by section 79(2) with respect to the first two grievances.

The Board went on to find, however, that even the third grievance is not arbitrable in the particular circumstances of this case since there was no collective agreement, and no arbitration procedure between the employer and the complainant which could have been "frozen" by the operation of section 79(1). In view of the Board's finding that none of the grievances were arbitrable, it decided that it will take jurisdiction to deal with the alleged s. 79 violations and that it will not defer to arbitration. (*Montebello Metal Inc.* [1982] OLRB Rep. Nov. 1678)

### **Cultural Characteristics of Employees not Basis for Inferring Membership Irregularities**

The Form 9 filed in this application for certification disclosed several irregularities in the collection of membership evidence. However, the Board found that the irregularities did not go to the heart of the membership evidence required by the law. In the circumstances the Board held that the disclosures reinforced the declaration set out in Form 9, and that the Board had nothing before it which would cause it to conduct any further inquiry.

The Board found some incidents of intimidation of employees to have occurred. These were few and isolated, and were unrelated to the solicitation of any cards. Only 3 out of 342 employees in the unit testified that they were intimidated. While conceding that the instances of intimidation were isolated, the respondent suggested that in the particular circumstances of this case, it cast sufficient doubt on the membership evidence as would cause the Board to direct a representation vote. It was pointed out that a large number of the unit employees were recent immigrants from Vietnam. It was contended that, given their background, the Board should infer what other irregularities "might" have occurred. The Board rejected this proposition and stated that to draw such inference solely on the basis of general characteristics attributed to a particular society would necessarily lead the Board to draw similar inferences with respect to all societies argued to be outside the "norm" of this province. It was tantamount to amending the Act so that there could be no certification without a vote where Vietnamese employees are involved. The respondent's objections being rejected, the applicant was certified without a vote. (*Walbar of Canada* [1982] OLRB Rep. Nov. 1734).

### Political Campaigning on Company Premises. Not Protected as Lawful Union Activity

The complainant engaged in a campaign in support of the CLC and its political affiliate, the NDP of Canada, in connection with a federal by-election. The campaign included the posting of pamphlets on union bulletin boards by officers of the complainant. The pamphlets were approved by the NDP and its trade union affiliates. The respondent employer, in a notice addressed to all employees, stated that any and all forms of canvassing, campaigning or posting of materials of any type on company property was prohibited unless authorized by the respondent. Union officials were told by management that no political campaigning was to take place on mine property, and that disciplinary action will be taken if such campaigning continued. The complaint alleged that the employer conduct constituted contraventions of sections 3, 64, 66(a) and 66(c) of the Act.

The substance of the complainant's argument was that a trade union is defined by the Act only to "include" the objective of regulating employer-employee relations, and that therefore, all other lawful activities of a trade union fall within the meaning of section 3 and constitute "other rights under this Act" as that phrase is used in section 66. The respondent took the position that the complainant's political canvassing, in substance, put forward the interests of the NDP as opposed to collective bargaining interests and that therefore the protections of the Act did not apply.

The Board stated that the Act attempts to accommodate the employer's property rights and the union's right to organize with as little destruction of one as is consistent with the maintenance of the other. The Board reviewed principles relating to employee activity during non-working hours that have evolved through arbitral jurisprudence, but pointed out that the rights protected through the arbitration process and through the Act are not necessarily the same. The dominant purpose of the Act as stated in its preamble centers on the furtherance of harmonious relations between employers and employees by encouraging collective bargaining. The Act protects activity directly related or necessarily incidental to this purpose, the Board pointed out.

While recognizing that by their nature trade unions' goals extended beyond collective bargaining, the Board stated that it is far from self-evident that the political and social goals of a trade union, no matter how important and worthwhile, constitute rights under the Act, even where those goals if achieved, could improve the lot of employees. After examining the context and the content of the literature in question, the Board concluded that the activity in this case was too remotely connected to the dominant purpose of the Act to attract the right asserted by the complainant. In the Board's view the communications in issue were not as connected to the concerns of the bargaining unit employees *as employees*, as they were to their concerns as voters. The union was not then acting in its capacity as exclusive bargaining agent but as an affiliate or supporter of a political party seeking the electoral support of certain employees.

The Board noted that its decision to dismiss the complaint did not bear on the rights that complainant may have before an arbitrator under a collective agreement should discipline be imposed on employees for engaging in the activity contrary to the respondent's directions. Finally, the Board cautioned the labour relations community not to interpret the Board's decision as licensing the primary censoring of trade union communication with bargaining unit members in the workplace. The Board's decision simply was that the particular pamphlet in question, in context and content, did not trigger the right asserted. The Board made it clear that it was not signalling an era of refined regulation of workplace communication by either the Board or employers. (*Adams Mines, Cliffs of Canada Ltd.*, [1982] OLRB Rep. December 1767).

### **Normal “Open Periods” Suspended Due to Bill 179 Extending Collective Agreements**

These were two pre-hearing displacement applications, which would normally have been timely. However, the incumbent union argued that the *Inflation Restraint Act*, (Bill 179) suspended the “open period” by extending collective agreements coming within its ambit, thereby rendering the applications untimely.

The critical language of *Bill 179*, section 13, extends “terms and conditions of every collective agreement”. The Board was required to determine if these words extended the collective agreement, or, as was argued by the applicant, only the terms and conditions of the collective agreement while allowing the agreement to expire and thereby preserving the open periods under the *Labour Relations Act*. The Board observed that a finding that section 13 extended the collective agreement and thereby closed off the open period provided under the *Labour Relations Act* would have far reaching consequences with respect to timeliness of displacement applications and applications to terminate bargaining rights, notice to bargain, appointment of conciliation officers and the right to strike or lockout or to request the appointment of an arbitrator under the *Hospital Labour Disputes Arbitration Act*.

The Board although stating that it should attempt to interpret *Bill 179* in such a way as not to interfere with the operation of the *Labour Relations Act*, concluded, on a reading of section 13, 14 and 15 of *Bill 179* that the intent of the legislature in using the language which it did was to extend collective agreements falling within the ambit of the Bill and to thereby close off the open periods provided under the *Labour Relations Act*. The Board described the implications of its finding vis-a-vis the operation of the *Labour Relation Act* but pointed out that the legislature by the use of the words “Notwithstanding any other Act” in section 13 of *Bill 179* recognized the conflict between the two statutes and intended *Bill 179* to prevail.

The applicant’s argument that *Bill 197* was null and void insofar as it abrogated the freedom of association guaranteed by the *Canadian Charter of Rights and Freedoms* also failed. The Board, assuming without finding, that the freedom to be represented by a bargaining agent of one’s choice in collective bargaining is encompassed by the freedom of association guaranteed in the charter, found that the restriction upon the right to displace a bargaining agent imposed by *Bill 179* did not breach the charter. It was specifically pointed out that the suspension of the right to decertify or replace a trade union under the Bill does not go beyond the maximum 35 month period during which employees may be locked into a bargaining agent under the *Labour Relations Act*. The Board noted that its analysis and conclusion applied to existing collective agreements and not to first agreement situations. (*Broadway Manor Nursing Home* [1983] OLRB Rep. January 26.)

### **Application of the Inflation Restraint Act to First Contract Negotiations**

This decision dealt with the timeliness of a termination application. Under section 12 of the *Hospital Labour Disputes Arbitration Act*, once a conciliation officer is appointed following initial certification of a trade union, no application to terminate bargaining rights of such union may be filed until the last two months of the parties’ first collective agreement. In this instance there was no question that a conciliation officer had been appointed, so that under normal circumstances the application would clearly have been untimely.

The hospital, however, argued that the passage of the *Inflation Restraint Act* (*Bill 179*) altered the situation. It was pointed out that under section 15 of *Bill 179*, amendments to terms



and conditions of a collective agreement may only take place by “agreement”. Since it is disagreement which gives rise to the need for conciliation, the conciliation services no longer have a role to play under *Bill 179* and are rendered void. It was argued that this abrogates the normal right to strike and lockout or interest arbitration, together with conciliation services themselves.

The Board noted that sections 13 and 15 of *Bill 179* speak of “parties to a collective agreement” and “terms and conditions of a collective agreement”. The Board noted that in a recent decision (*Broadway Manor*) it had been decided that in a renewal negotiation situation, the terms and conditions of the collective agreement were extended by *Bill 179*, thereby closing off the usual open period for purposes of a displacement application. However, the Board distinguished the matter before it from *Broadway Manor*. In the present case the Board was dealing with negotiations for a first agreement and therefore no “parties to a collective agreement” or “terms and conditions of a collective agreement” existed. That being so the Board concluded that neither section 13 nor section 15 of *Bill 179* had any application to first contract negotiations. Since there was no conflict between the provisions of the Bill and the normal rights available to parties in a first-contract negotiation situation, the Board saw no reason to conclude that normal collective bargaining is outstated in these circumstances.

Therefore the Board concluded that, in relation to first contract negotiations, the normal rights and obligations remain unaffected except to the extent of restrictions placed by *Bill 179* on the level of compensation increases. This means that conciliation services are available, together with the usual right to strike or lockout (interest arbitration in the case of “hospitals”). In the result the appointment of the conciliation officer was held to have remained in force, rendering the application for termination untimely. (*Doctors’ Hospital*, [1983] OLRB Rep. Feb. 227).

### **Board Ruling on Jurisdictional Challenge Based on Charter of Rights**

The complainant union filed an unfair labour practice complaint alleging that the grievor was dismissed by the respondent because of his union sympathy. Counsel for the respondent submitted that his client was prejudiced in that the reverse onus provision of section 89(5) of the Act is contrary to the guarantee of the presumption of innocence until duly proven guilty, contained in section 11(d) of the *Canadian Charter of Rights and Freedoms*.

This objection raised two issues: firstly, whether section 89(5) is contrary to the Charter and secondly, whether the Board should rule upon constitutional challenges of a provision of its own statute or defer such an issue to the courts.

The Board, dealing with the latter issue noted that it had, with judicial approval, ruled on the constitutional issue of whether a particular application fell within federal or provincial jurisdiction under the B.N.A. Act on many occasions. Quoting from a decision of the Supreme Court of Canada and emphasizing the imperative nature of the *Canada Act*, the Board concluded that it is required to interpret and apply provisions of the Charter, subject of course, to review by the courts.

Turning to the merits of the constitutional challenge, the Board stated that the reverse onus provision of the Act was both purposive and historically rooted. The Board canvassed reasons why a reverse onus provision is consistent with the more efficient advancement of the policies of the Act. It reviewed arbitral jurisprudence and court decisions in wrongful dismissal actions, where the rule had consistently been followed that where an employee proves hiring and dismissal, the employer has the burden for proving that the dismissal was for just cause. The Board concluded



that the reverse onus provision in section 89(5) is in keeping with the extensive experience of the civil courts in wrongful dismissal actions and boards of arbitration in discipline cases and that it is not inconsistent with the general precepts of due process or natural justice in civil cases.

The Board also concluded that section 11(d) of the Charter had no application to the reverse onus applied in unfair labour practice complaints before the Board. Citing its own decisions and those of the courts, the Board stated that section 89 provides for civil remedies as an alternative to criminal prosecution in courts provided for elsewhere in the Act. The Board and the courts have consistently viewed section 89 as remedial and not punitive legislation. On the other hand section 11(d) of the Charter is expressly stated to apply to the prosecution of “offences” and is therefore intended to operate in the realm of criminal proceedings. In view of all of the above reasons, the Board concluded that section 89(5) is not contrary to the *Charter of Rights and Freedoms*. (*Third Dimension Manufacturing Ltd.* [1983] OLRB Rep. February 261.)

### **Conviction and Fine Imposed by Union on Member in Contravention of Act**

The complainant, a union member, was charged by fellow members on two separate counts and convicted by a union trial board constituted under the union’s constitution. A penalty by way of a fine of \$500 was assessed against him on the first count. On the second, he was fined \$1000 and barred from having any voice in the union’s affairs for a period of 5 years. The complainant alleged that section 80(2)(b) of the Act had been violated in that the charges were laid against him in response to a financial statement complaint he had filed against the union and that the trial board was improperly influenced by his complaint when it decided those charges.

The Board found that the financial statement complaint was not a consideration at the trial of the first charge and the complaint on that aspect was dismissed. However, the Board found on the evidence that the filing of the financial statement complaint was clearly a consideration in the conviction of the complainant on the second charge. Therefore, applying the “taint theory” approach, the Board held that the union had contravened the Act. The board ordered the conviction and penalty imposed on the second charge be rescinded and removed from the union’s record.

On a preliminary issue, in rejecting the union’s contention, the Board held that the trial board of the union, when fulfilling its mandate under the union constitution, was acting on behalf of the union and therefore was properly named as respondent in the complaint. (*William Egan* [1983] OLRB Rep. February 298.)

### **Board Directing Extensive Remedies for Flagrant Violations**

The respondent employer operated a rest home which provided food, shelter and personal care for elderly persons. Immediately upon learning of organizational activity among its employees, the respondents initiated a series of flagrant violations of the Act. This unlawful conduct, which continued after the union obtained a certificate, included the discharge, lay-off and reduction of hours of employees, withdrawal of existing privileges, issuance of written warnings and the use of members of the individual respondent’s family to do bargaining unit work.

Having found that the impugned conduct contravened section 66, 70, 79 and 80 of the Act, the Board issued an extensive remedial order. Besides the usual cease and desist order and compensation for lost wages with interest, the order included a direction that certain disciplinary records be removed; a direction to restore privileges previously enjoyed for the duration of the

freeze period and to compensate for privileges that were denied; a direction to refrain, during the freeze period, from using family members to do bargaining unit work to an extent beyond that which was performed before; a direction not to meet with any employee for purposes of disciplining the employee unless a union official or other employee selected by the employee is present; and a direction to provide the union with a copy of each work schedule prepared until a collective agreement is concluded. In light of the agreement of the union and the employer that the posting of the Board's usual employee notice at the rest home could be unduly disturbing to its residents, the Board directed instead that a copy of such notice be mailed to each employee at the respondent's expense. (*Heritage Manor Rest Home*, [1983] OLRB Rep. March 385.)

## **CONSTRUCTION INDUSTRY DECISIONS**

### **Board's Jurisdiction to Hear Complaint Already Considered by I.J.D.B.**

In a jurisdictional dispute proceeding under section 91, the complainants requested that the Board issue a direction with respect to certain work. It was the position of the respondent that the Board had no jurisdiction to hear the complaint because section 91(14) of the Act precluded the Board from inquiring into a work assignment dispute where the collective agreement contains a provision requiring referral of such disputes to a mutually selected tribunal.

The Board held that for section 91(14) to be applicable the collective agreements binding on the employer and the unions that are parties to the proceedings under section 91 must contain such a provision. The employer elected to refer the matter to the I.J.D.B., the tribunal specified in the relevant collective agreements. The Board found that simply because the complainant union was dissatisfied with the tribunal's decisions did not mean that the Board could hear the complaint. In addition, there was no evidence that the tribunal had gone out of existence. The complaint was therefore dismissed. (*Comstock International Limited*, [1982] Rep. June 854.)

### **Board Regulating Picket Activity**

The employer made an application for a declaration of an unlawful strike and sought a cease and desist order. The Plumber's union was on a lawful province-wide strike and had established a picket line at the employers' construction projects. Tradesmen not on strike refused to cross the picket line.

The Board held that employees working at a common construction site but otherwise unrelated to a labour dispute involving another trade are protected by sections 74 and 76(1). Therefore, the Board found that the Act deals with picketing and must be interpreted with due sensitivity to the reality of the province-wide single trade bargaining created by the statute. The Board accepted that section 74 must be read in light of and subject to section 76 and the saving provision in subsection 2. The establishment of picket lines which cause unlawful strikes contrary to section 74 and 76 may be remedied by the Board as the procuring or encouraging of unlawful strikes by officers, officials and agents of a trade union. On the other hand, subsection 2 of 76 is aimed at permitting, among other things, picketing arising out of and related to a lawful strike. Therefore, the Board held that some integrating and melding of purpose was required in applying these various sections. Section 76 was designed to remove the problem of employee directed secondary picketing and, even with the advent of province-wide bargaining, the Board concluded that section 76(2) did not permit unrestricted picketing directed at employees of employers unconnected with the labour relations dispute other than by geography provided that separate

entrances were established for such employees and provided further that the work of the striking trade was not being performed.

Therefore, the picketing was found to be unlawful unless it was restricted to entrances established solely for use by employees represented by the striking union. (*Sarnia Construction Association*, [1982] OLRB Rep. June 922).

### **Union Under Continuing Duty to Oversee the Conduct of Province-Wide Strike**

The applicant, a designated employer bargaining agent, claimed that the respondents breached sections 146(2) and 148(1) of the Act by continuing to supply employees during a lawful province-wide strike. The Board found that in supplying men the union had breached section 146(2), by being party to an “other arrangement”. Both the union and the employer involved were ordered to cease and desist pursuant to section 89. In addition, the duty under section 148(1) was found to be an ongoing one requiring positive and reasonable steps to ensure that a strike continues to be called in accordance with the desires of the employee bargaining agency. (*Sikora Mechanical Ltd.*, [1982] OLRB Rep. June 941).

### **Whether Strike Occurring Where Sub-Contractor Not Scheduling Work Because of Picket Line**

The plumbers’ union, on a lawful strike, set up a picket line which other tradesmen employed by sub-contractors honoured. The applicant requested relief under section 135 of the Act. The Board was satisfied that the requirement of a common understanding had been established since the sub-contractors’ employees had acted in response to union solidarity. However, the Board found that there was no cessation of work, or refusal to work or to continue to work because, in anticipation of the picket line, the sub-contractors did not schedule work on the project. Accordingly, the respondents had not engaged in a strike within the meaning of section 1(1) (o) of the Act. In these circumstances, it was not necessary for the Board to arrive at any conclusion with respect to the issue of whether the Board should exercise its discretion and grant the remedy requested by the applicant. (*Wharton Industrial Development Ltd.*, [1982] OLRB Rep. July 1105).

### **For Purposes of Termination Applications in the ICI Sector Bargaining Unit Means Unit of Employees of Individual Employer**

In an application under section 57 of the Act for a declaration terminating bargaining rights in the ICI sector, the respondent union took the position that the bargaining unit was comprised of all employees of all employers covered by the provincial agreement and therefore the applicant had not met the requirement of section 57(3) that an application have the voluntary support of not less than 45% of the employees in the bargaining unit defined in the collective agreement. The application was supported by the 5 employees of the employer, whereas the relevant provincial agreement covered thousands of employees. The respondent’s position was that the bargaining unit for the purposes of section 57(3) was the province-wide bargaining unit described in the provincial agreement.

The Board discussed a number of sections in the Act but in none of these was there a reference to a provincial bargaining unit of employees. The union was certified for a bargaining unit made up of employees of a particular employer and the Board found that there is not a single provincial bargaining unit, but rather a conglomeration of individual bargaining units to which the



terms of the provincial collective agreement apply. The Board accordingly found that the correct bargaining unit for the purposes of termination application was described as the employees bound by the provincial agreement in the employ of the employer. (*Clarence H. Graham Construction Limited*, [1982] OLRB Rep. Aug. 1147).

### **Union Members on Province-Wide Strike Not Permitted to Perform Struck Work**

In a previous decision the Board had found that the respondent union and All-Pro Contractors had contravened section 146(2) of the Act by entering into a “maintenance agreement” whereby the union agreed to supply members to perform the struck work during a legal province-wide strike. The union was found in breach of section 148(1) in assigning its members to perform such work and a cease and desist order was issued. Subsequent to that order the former job superintendent of All-Pro formed his own non-union company, Regional Mechanical Services, which continued to perform struck work at the particular project using the same employees who were members of the union. The complaint sought a non-compliance declaration, alleging that Regional was a “related employer” and as such was bound by the Board’s previous order. In addition, relief was sought for independent violations of sections 146(2) and 148(1) of the Act.

The Board found that All-Pro was not a related employer within the meaning of the Act. On the question of whether the respondent union and Regional had contravened section 146(2) the Board concluded that the legislature could not have intended to permit one side to a dispute to avoid the impact of the legislation and Board orders by creating a new “non-union” entity, as was done in this instance or by offering to provide its striking members directly to the customer-owner to perform the struck work. The Board concluded that section 146(2) must be interpreted as prohibiting an arrangement with *any* person, for union members to perform work, which but for the strike, would have been performed by the employer who has been struck. If a union and its members opt for strike action, thereafter, the members cannot continue to perform the struck work even for a non-union employer. (*All-Pro Contractors et al*, [1982] OLRB Rep. Aug. 1109).

### **Persons Not Employed in Unit On Application Date Not Entitled To Apply for Termination of Bargaining Rights**

An application for termination by two employees was opposed by the Carpenters, Local 1669 on the ground that on the application date they were not employees in the carpenter’s bargaining unit. The evidence was that on the application date and on the days preceding, the applicants were employed as labourers, and not as carpenters.

The Board held that in construction certification cases, it is an established policy that only the application date is looked at when determining the list of employees in the bargaining unit. The same applies in relation to termination applications. The applicants were not in the unit on the application date and hence were not eligible to apply for termination of the Carpenters’ Union bargaining rights. (*T.E. Leroux Contracting Ltd.*, [1982] OLRB Rep. Aug. 1204).

### **Employer Bargaining Agency’s Authority Limited**

The International Union of Elevator Contractors, Local 50, referred a grievance to arbitration before the Board under section 124 of the Act alleging that Beckett Elevator Co., which was not a member of the employer bargaining agency, but was represented by it by reason



of a Ministerial designation, had breached the collective agreement provisions relating to a form of industry-wide bumping rights. A “Joint Industry Committee”, established under the collective agreement to decide disputes, had found Beckett in breach of the agreement and issued a remedial order. Beckett refused to comply. The grievance requested a direction that Beckett comply with the JIC decision or, alternatively, that the Board hear the grievance on its merits. Beckett, while admitting that the JIC decision was binding, took the position that the Board had no authority to enforce it in a section 124 application. Beckett also argued that the existence of a decision by the JIC precluded the Board from hearing the grievance on its merits.

The Board reviewed the history and the purpose of the relevant provisions of the Act and in particular section 143, which vests an individual employer’s rights in the designated bargaining agency only for the purpose of collective bargaining and concluding a provincial collective agreement. While the Board acknowledged the employer bargaining agent’s interest in the uniform administration of the agreement, the Board held that it would be inconsistent with the scheme of the Act to permit a designated employer bargaining agency to attempt to impose a binding resolution of a grievance on an individual employer that is not a member. The Board also held that availability of the internal mechanism did not in itself preclude the Board’s jurisdiction under section 124 to hear the grievance. Beckett’s request that the grievance be consolidated with its unfair representation complaint was refused, since the latter was not sufficiently particularized to enable the Board to ascertain whether a common factual foundation existed. (*Beckett Elevator Company Limited*, [1982] OLRB Rep. Sept. 1244).

### **Union Representing Employees Working in Ontario on Irregular Basis Certifiable**

This was a construction industry certification in which the employer’s reply contended that it operated in Ontario only on an irregular basis and that it was located in Quebec. It argued that its labourers, who were mostly resident in Quebec, were subject to the Quebec construction decree, and hence were outside the jurisdiction of the Ontario Labour Relations Board.

The Board held that the Quebec decree applied only when the employees are working in that province. The fact of location in Quebec or that work in Ontario was only on an irregular and limited basis was no reason to deny certification to a union that otherwise met the requirements. A certificate was issued. (*Common Construction Company*, [1982] OLRB Rep. Sept. 1271).

### **Minister’s Authority to Appoint Nominee to Arbitration Board Challenged**

The employer was a sandblasting and painting contractor, most of whose work has been outside the construction industry. The employer did not dispute that it was bound by the terms of a provincial agreement for work performed in the ICI sector of the construction industry, but it refuted the contention of the union and the employer bargaining agency that the terms of the provincial agreement were also binding on it in the other sectors of the construction industry as well as on non-construction work. The employer declined to appoint a nominee to an arbitration board, claiming that the work in issue was all non-construction work and hence outside the scope of the agreement that the union was purporting to grieve under. The union requested the Minister to appoint a nominee to the board. The employer then objected to the Minister of Labour making such an appointment and the Minister referred the matter to the Board pursuant to section 107 of the Act.

Having regard to the scheme of provincial bargaining as set out in the Act and section 143(a), the Board stated that an employer, for whose employees the union holds bargaining rights but is

not a member of the employer bargaining agency, is bound by the terms of the provincial agreement with respect to only work done in the ICI sector of the construction industry. With respect to other sectors of the construction industry, and non-construction work, it would be up to the union and such an employer to negotiate one or more separate agreements.

The employer before the Board, however, was not in that position because he was a member of the employer bargaining agency which did have the authority to negotiate on the employer's behalf with respect to all other sectors of the construction industry as well as for non-construction work. The union and the employer bargaining agency had negotiated a single agreement which related to all types of work. Therefore, being a member of the agency, the employer was bound by the one collective agreement covering all sectors of the construction industry and non-construction work. Accordingly, the board found that the Minister did have the authority to appoint a nominee to the arbitration board. (*London Sandblasting & Painting Limited*, [1982] OLRB Rep. Sept. 1322).

### **Referral of Grievance After Expiry of Collective Agreement**

Misco was bound by a provincial collective agreement which expired on April 30, 1982. It filed a grievance in timely fashion based on what occurred in January, 1982. The grievance was referred to the Board on July 9, 1982, that is, after the agreement had expired. The respondent union took the position that Misco was not entitled to resort to section 124 since at the time of referral it was no longer a "party to a collective agreement" within the meaning of that section. The union relied on a earlier arbitration decision (*Milltronics Ltd.*, 30 LAC (2d) 393) interpreting section 45 of the Act in that fashion.

The Board stated that the purpose of section 124 was to provide an expeditious, final and binding resolution to grievances in the construction industry. It examined previous Board decisions and an arbitration award interpreting the words "a party to a collective agreement" in other sections of the Act as including an applicant who was a party to a collective agreement at the time of the events giving rise to the grievance. The Board preferred such an interpretation to the narrower interpretation in *Milltronics* and held that it would entertain the referral. (*Misco Insulation Company Limited*, [1982] OLRB Rep. Sept. 1343).

### **Scope Clause Expanded by Voluntary Recognition—No Bar to Certification Application for "Added On" Employees**

The Labourers' Local 1081, applied to be certified for construction labourers in the employ of the respondent in the Kitchener area. The Operating Engineers, Local 793, intervened and claimed that it held bargaining rights for the employees in question. The evidence was that Local 793 was certified for the respondent's equipment operators, but by a negotiated scope clause the unit was expanded to cover "all employees". The Board found that the labourers were not asked at the time whether they wished to be represented by Local 793. Local 1081 relying on section 60 of the Act, took the position that at the relevant time Local 793 was not entitled to represent labourers and therefore the application was timely.

The board held that the relevant time for ascertaining whether Local 793 was entitled to represent labourers was the time of recognition, i.e. the time the collective agreement was entered into. The Board rejected Local 793's argument that it was a certified union and that therefore section 60 did not apply. The Board found that it was not a certified union in relation to the

labourers. Thus the union had to show that it was “entitled to represent” the labourers at the relevant time and since it failed to do so, the certification application was held to be timely. (*Warren Bitulithic Limited*, [1982] OLRB Rep. Sept. 1375).

**Complaint Filed on Behalf of U.A. Local 46 Seeking Assignment of Work Being Performed by Members of CLAC Dismissed.**

The Toronto and Central Ontario Building Trades Council and U.A., Local 46 filed a jurisdictional dispute complaint seeking to have certain plumbing and pipefitting work assigned to its members. The employer Simcoe Mechanical Contracting Limited was party to a collective agreement with CLAC and assigned the work to its employees who were members of CLAC.

Simcoe had been the lowest bidder on tender called by the general contractor, but had not been awarded the sub-contract because the general contractor was bound by a collective agreement requiring the use of sub-contractors whose employees were members of a Council. The owner subsequently deleted the mechanical portion of the work from its contract with the general contractor and contracted directly with Simcoe to perform that work. The Council and Local 46 sought to have the owner have the work assigned to its members, but were unsuccessful.

The Board reviewed the various criteria applicable in resolving jurisdictional dispute complaints and found that although the criterion of area practice massively favoured the claim of Local 46, that factor alone was not sufficient to cause the Board to direct the transfer of work from CLAC to it.

The Board viewed the complaint as essentially an issue over representation rather than jurisdiction. The evidence was that two attempts to displace CLAC were unsuccessful. The Board noted that the Act contemplates the existence of CLAC and observed that a decision which found area practice to be predominant factor could result in CLAC being deprived of its bargaining rights throughout the province. (*Simcoe Mechanical Contracting Limited*, [1982] OLRB Rep. Sept. 1352).

**Status of Employees When Employer Becomes Bound by Province-Wide Agreement Containing Union-Shop Clause**

In this referral of a construction industry grievance the Board declared in an interim decision that, by the coming into effect of the deemed recognition provision in s.137(2) of the Act, the employer had become bound by the applicable province-wide collective agreement. At the hearing on remedies, the union requested *inter alia*, a direction that the employer discharge employees who were not members in good standing with the union and damages resulting from the employer's breach of the province-wide agreement.

The Board noted that the deemed recognition provision makes no reference to employee wishes and examining the purpose of the section, the Board concluded that it operated irrespective of employee wishes. The Board stated that once an employer becomes bound by the province-wide agreement through the operation of s.137(2), the union has a right, as well as a duty, to enforce it. In enforcing the union shop provision, the union is entitled to seek the discharge of employees who were not its members, provided that the employees in question had notice of their obligation to become members, and of the fact that they may be discharged if they do not fulfill their obligation. Since this issue had not previously been determined, and since there was



confusion as to the obligations of the parties, the Board held that the particular employees in question had such notice only upon the issuance of the Board's present decision. Therefore the Board directed the employer to discharge the employees, only if they fail to make application to become members of the union within five working days from the date of decision. The Board noted that s.46(2) would prevent the union from seeking the discharge of the employees, if, upon application being made, they are denied union membership for any of the reasons set out in clauses (c) through (g). It further noted that denial of membership for reasons not protected by s.46(2) may nevertheless be seen as a breach of the duty of fair representation.

On the facts of the case the Board held that damages would flow from the date the employer was put on alert by the union's grievance letter. (*Culliton Brothers Ltd.*, [1982] OLRB Rep. Nov. 1602).

### **Extent of Employer's Discretion to Reject Tradesman Referred Through Hiring Hall**

The grievor was a member of IBEW, Local 1788 and had been employed as an electrician at Hydro's job sites through a hiring hall, without complaint or incident. Then in 1975, the grievor was convicted under the *Criminal Code*, for unlawfully conspiring with several others to export controlled goods (namely, 15 semi-automatic military rifles) from Canada. The transcript of the trial revealed that the rifles were intended to be sent to Ireland by way of the U.S. The grievor was convicted and served 16 months of a 2 year jail sentence.

Upon his release in 1976 the union referred the grievor to Hydro's job sites once again. After initially refusing to hire, Hydro engaged in some discussion with the union and agreed to hire him. However in June 1982, when the grievor was referred to the Pickering nuclear generating station site, management refused to hire him, taking the position that he was "not suitable for employment". Several subsequent referrals of the grievor to nuclear and non-nuclear sites were also rejected on the same grounds. The union grieved, claiming that the refusal to hire was a breach of the collective agreement.

The company gave testimony to the effect that in February and March of 1982, it had received information through its Security Dept. and through newspaper reports, that the grievor was one of five Irish nationals arrested while crossing the Canada-U.S. border and that the grievor was facing charges in the U.S. including the charge of aiding and abetting illegal entry into the U.S. The newspaper reports alleged, *inter alia*, that during the arrests, immigration officials seized a shopping list of guns and ammunition to be purchased in the U.S. to be sent to North Ireland, and linked two of the Irish nationals arrested with the grievor to the IRA and the 1979 assassination of Lord Mountbatten. Hydro took the position that its refusal to hire the grievor was based on this information.

The IBEW submitted that the refusal to hire the grievor was tantamount to a discharge or discipline within the meaning of the collective agreement and that therefore the burden was on Hydro to justify its actions. It was further submitted that the charges against the grievor were not job related and that the collective agreement did not reserve a right to reject referrals. On behalf of Hydro, it was submitted that the agreement did not fetter the management's discretion to hire except for the responsibility to base its hiring decisions on reliability and competency. It was argued that as long as it hired only IBEW members, the agreement did not oblige Hydro to hire any particular member referred to it. Finally it was submitted that the "risk" presented by the grievor through his association with the IRA, justified its refusal to hire him.



The Board rejected Hydro's argument that in the absence of a specific and unequivocal encroachment on management's right to hire, it must be deemed to have an unfettered discretion. The Board reviewed the importance of hiring halls in the construction industry and pointed out that persons referred from a hiring hall are certified tradesmen possessing a minimum level of proficiency. Therefore, the Board held that in the absence of language reserving an unfettered hiring discretion, it was not unreasonable to infer that in agreeing to the particular hiring hall arrangement Hydro had also agreed to fetter its hiring discretion.

However, the Board went on to hold that this conclusion did not mean Hydro must hire all tradesmen referred, regardless of their reliability or competency. In interpreting the particular agreement the Board held that, while not specifically giving an unbridled discretion, the agreement also did not impose a standard of "just cause" or "correctness" on Hydro. The Board drew an analogy between the act of hiring through a hiring hall and the act of promotion in a non-construction context. The Board concluded that, as in promotion, the employer subject to a hiring hall arrangement must act reasonably, in good faith and without discrimination in assessing the reliability and competency of a tradesman referred through the hiring hall.

The legal onus was also placed on the trade union to establish that Hydro acted improperly in this respect. Applying this standard of "reasonableness" to the refusal to hire the grievor at the *nuclear sites*, the Board went on to hold that the employer was reasonably justified in its concerns about hiring the grievor at those sites. Consequently, the grievance was dismissed insofar as it related to the two nuclear sites. Having outlined the proper standard to be used in interpreting the hiring hall provision, the matter was remitted back to the parties to consider the implications of the award for the contested refusals to hire at various non-nuclear sites. (*Ontario Hydro*, [1983] OLRB Rep. Jan. 99).

### **Appropriate Bargaining Units in ICI Sector for Affiliated Bargaining Agents**

The United Brotherhood of Carpenters recently chartered Local 1030 to represent "helpers, including labourers and other construction workers, (excluding carpenters and carpenters apprentices who are employed in the ICI sector)." In five applications filed under s.144(5) of the Act, Local 1030 sought to be certified to represent labourers, cement finishers and waterproof applicators in the ICI sector in the province of Ontario and in all other sectors in several other Board areas.

Local 1030 took the position that it was not an affiliated bargaining agent (A.B.A.) and not represented by a designated bargaining agency, and that therefore it was eligible to apply under s.144(5) for a unit which would be appropriate under s.6(1). The intervener took the contrary position, that Local 1030 was an A.B.A. and therefore, labourers, when represented by Local 1030 would not constitute an appropriate bargaining unit under s. 144(1).

The Board found that Local 1030 satisfied the dual criteria of the definition of A.B.A. in s.137(1)(a) but was not an A.B.A. represented by the carpenters' employee bargaining agency (E.B.A.) because its charter excluded it from representing carpenters employed in the ICI sector. The Board however, found that there was no similar restriction with respect to the Millwright trade of the Carpenters Union. Therefore, the Millwrights' E.B.A., which was designated to represent in collective bargaining in the ICI sector, inter alia, any locals of the Carpenters Union chartered subsequent to its designation to represent Millwrights, was designated to represent Local 1030. That made Local 1030 an A.B.A. represented by the Millwrights E.B.A.

The Board went on to find that since the applications related to the ICI sector, they must be brought under s.144(1). By reading the definitions in the Act of "A.B.A." and "Provincial Agreement" together, the Board concluded that labourers, cement finishers and waterproof applicators, when represented by Local 1030, would be trades not covered by a provincial agreement of the Carpenters Union. Therefore, a unit comprised of those trades, when represented by an A.B.A. which was represented by an E.B.A., would not satisfy the definition of an appropriate unit prescribed by s.144(1).

The Board held that even were Local 1030 was not represented by the Carpenters' or Millwrights' E.B.A.'s and, therefore, eligible and certified under s. 144(5), it would be precluded by s.146(2) from binding the trades in question to any collective agreement other than the provincial agreement. (*Manacon Construction*, [1983] OLRB Rep. Mar. 407).

## VI COURT ACTIVITY

*A. J. Fish & Sons Limited,*  
**Supreme Court of Ontario, Toronto Motions Court,**  
**February 23, 1983; Unreported**

Upon receipt of an application for certification (Construction Industry) the Board served notice of the application together with the usual package of material on the employer. The employer did not file a reply, a list of employees, or specimen signatures, but returned the material to the Board and requested an explanation. The Registrar of the Board did not reply. Acting upon the information available, the Board issued a decision certifying the union.

Subsequently, the employer made certain allegations and requested the Board to reconsider its decision to certify and hold a hearing. The Board held that the allegations could have been filed with reasonable diligence prior to the Board's initial decision and refused to exercise its discretion to reconsider in the circumstances.

The employer and some of its employees applied for judicial review and for a stay of grievance arbitration proceedings before the Board. The Court adjourned the motion for a stay pending the disposition by the Board of the grievance arbitration. Subsequently, both the employer and employees discontinued their judicial review applications.

*Bellai Brothers Ltd.,*  
**Supreme Court of Ontario, Divisional Court,**  
**October 12, 1982; Unreported**

The union referred two grievances to the Board under section 124 of the Act. The first was a grievance over a work assignment and the other was a grievance alleging that the grievor, a union steward was discharged contrary to the collective agreement. At the hearing, the union, with the Board's consent, withdrew the work assignment grievance. The Board proceeded to hear the discharge grievance, allowed it and directed that the grievor be reinstated with compensation.

The employer sought judicial review of the Board's decision, submitting that the two grievances were related and that by permitting the withdrawal of one and proceeding with the other the Board had breached the rules of natural justice. The Court held that the only issue remaining before the Board was whether the grievor had interfered with the general progress of work at the project in carrying out his duties as a union steward and that the employer's case in this regard had not been prejudiced. The Court found no error in the Board's decision to permit the withdrawal of one grievance and to proceed with the other. The application was dismissed.

*Baltimore Aircoil Interamerican Corp.,*  
**Supreme Court of Canada,**  
**April 20, 1983; Unreported**

An application for leave to appeal to the Supreme Court of Canada from the decision of the Ontario Court of Appeal was dismissed. (See Ontario Labour Relations Board Annual Report, 1981-82.)

*Biltmore Stetson (Canada) Inc., et al,*  
**Supreme Court of Ontario, Toronto Motions Court,**  
**March 25, 1983, 41 O.R. (2d) 287; 83 CLLC ¶14,037**

The employer had advised the incumbent union that it was entering into an agreement of purchase and sale, whereupon the union served notice to bargain under section 63 of the *Labour Relations Act* upon the purchaser. After the notice had been given and the sale had taken place, an application for certification was filed by a union seeking to displace the incumbent union.

At the hearing, the incumbent union challenged the timeliness of the certification application. The Board concluded on the evidence that notice to bargain had been given to the purchaser employer one day before the sale of the business occurred. The issue was whether the notice to bargain barred the later certification application for one year pursuant to section 63(10).

The Board concluded that the notice was effective notwithstanding that it had been given prior to the sale. The Board held that the “earliness” was cured by the passage of time because the notice was still “speaking” on the day the sale took place. Having found that there was effective notice, the Board held that by operation of section 63(10), no application for certification may be made for one year from the effective date of the notice to bargain and therefore the application for certification was untimely.

The applicant union sought and was granted leave to bring a judicial review application before a single judge of the High Court on the grounds of urgency. The Court, in dealing with the application for judicial review, held that the proper question for the Board was whether notice had been given after the sale and that the Board incorrectly concerned itself with the question of whether a notice given before the sale could be treated as “effective”. The court concluded that the Board’s error in asking the wrong question was so fundamentally erroneous as to justify court intervention. The court quashed the decision of the Board and remitted the matter back to the Board to be dealt with in light of the court’s decision.

An application for leave to appeal the decision to the Court of Appeal is pending.

*Cadbury Schweppes Powell Inc.,*  
**Supreme Court of Ontario, Divisional Court,**  
**July 15, 1982, 15 A.C.W.S. (2d) 194**

The Mechanical Contractors Association of Ontario, a designated Employer Bargaining Agency and the Plumbers and Pipefitters Employee Bargaining Agency did not reach an agreement renewing their provincial agreement in the ICI sector and a province-wide strike ensued. Local 463 of the Plumbers’ Union was an affiliated bargaining agent and was bound by the terms of the designation issued to the Employee Bargaining Agency. Local 463 entered into a “maintenance agreement” with a contractor, who was bound by the terms of the designation order issued to the Mechanical Contractors Association of Ontario. Under this agreement, after the commencement of the strike, Local 463 supplied the contractor with workers to perform ICI work at a construction project owned by Cadbury Schweppes Powell Inc.

Upon a complaint by the M.C.A.O., the Board held that the “maintenance agreement” was in violation of section 146(2) and further that assigning its members to work during a province-wide strike, Local 463 had violated section 148(1) of the Act. A cease and desist order was issued



against the union and its officials, thereby resulting in the shutdown of the construction work which had been performed for Cadbury.

Cadbury applied for judicial review and sought a stay of the Board's order. The application for a stay of the Board's order was dismissed by the Divisional Court. A notice of motion seeking leave to appeal that decision was filed and later abandoned. The application for judicial review is not proceeding further.

*Can-Am Acoustics Limited*  
**Supreme Court of Ontario, Divisional Court,**  
**October 27, 1982; London Motions Court,**  
**November 23, 1982; Unreported**

An application for certification was filed with the Board in which certain employees had filed a timely petition in opposition to the union. The union also relied on section 1(4) of the Act. The Board scheduled a hearing of the certification application since both the union and the company had made allegations against each other. The Board had inadvertently failed to give notice of the hearing to the objecting employees.

At the hearing, the Board was advised that the allegations of the union and the company were withdrawn and the only issue remaining was the degree of membership support enjoyed by the Union. The Board determined at the hearing that none of the persons who signed the petition had previously joined the union and that therefore the petition could not affect the union's level of membership support. However, since the objectors had not received notice of the hearing, the Board held the certification in abeyance, sent copies of its decision to the objectors and permitted the objectors to make any representations they wished to make. The objectors, through their counsel wrote to the Board claiming that there had been a denial of natural justice by the failure of the Board to give notice.

The Board then scheduled a second hearing and permitted the objectors to present any evidence or make any representations with respect to the matters in issue. However, beyond reiterating that there had been a breach of natural justice by failing to give notice of the first hearing, counsel for the applicant failed to present any evidence or submissions to the Board. The Board dismissed the objections of the applicants and certified the union.

The applicants filed an application for judicial review in the Divisional Court and sought a stay of the Board's decision pending the hearing of their application for judicial review. The application for a stay was denied. A further application for judicial review before a single judge of the High Court was filed. The Court refused to grant leave to bring the matter before a single judge and the application was therefore dismissed. The first application for judicial review was also subsequently dismissed on consent of the parties.

*Emrick Plastics Inc.,*  
**Supreme Court of Ontario, Divisional Court,**  
**October 18, 1982; Unreported**

Pending an application for judicial review, the employer sought a stay of the Board's decision wherein it held that as a result of a sale of a business taking place, the employer had become bound to a collective agreement. The court dismissed the application for a stay. The application for judicial review was abandoned subsequently.

***Inducon Development Corporation et al,***  
**Supreme Court of Ontario, Toronto Motions Court,**  
**May 14, 1982, Unreported;**  
**Divisional Court, November 29, 1982, Unreported;**  
**Divisional Court, December 16, 1982, 40 O.R. (2d) 539; Court of Appeal, February 21, 1982,**  
**Unreported**

In a grievance referred to the Board pursuant to section 124 of the Act, the Board declared that several employers constituted "a single employer" under section 1(4) and that by virtue of section 137(2), the employers were deemed to have recognized the trade union as bargaining agent for the employers' carpenters working in the ICI sector of the construction industry.

The employer and employees applied for judicial review before a single judge of the High Court. Although leave to bring the application was denied, the Court, on its motion granted a stay of the Board's decision. (See Ontario Labour Relation Board Annual Report, 1981-1982.) Although leave to appeal the decision granting the stay was obtained, the appeal was not pursued further. The applicants also sought to adjourn the hearing of the judicial review application, and were refused.

Before the Divisional Court on the hearing of the judicial review application, three submissions were made by the applicants. Firstly, it was submitted that in applying sections 1(4) and 137(2) the Board failed to take into account the fundamental principle of the Act that employees and employers are free to choose whether and by whom they will be represented in collective bargaining. Secondly, it was argued that in the absence of evidence, the Board found that the employers were represented by a designated or accredited employer bargaining agency. Thirdly, it was argued that section 137(2) is of no force and effect as being contrary to the *Canadian Charter of Rights and Freedoms*.

Dealing with the third submission first the Court held that the Charter had no application in an application for judicial review of a Board decision which was made before the date of proclamation of the Charter. As to the first issue, the Court concluded that section 1(4) does not make it essential for the Board to consider the wishes and desires of employees. The Court held that section 137(2) provides that if an employer is bound by a provincial collective agreement anywhere in the province that employer becomes bound by that agreement throughout the province in respect of construction work performed in the ICI sector. The Court stated that "this is an essential part of a scheme of legislation to provide effective province-wide bargaining..." and that the legislature had seen fit to limit the employees' rights in the interest of attempting to make collective bargaining responsive to the needs of the construction industry. As to the second issue, the Court found that the Board had before it evidence as to the ministerial designation, which was the only evidence necessary in order for the Board to make the finding that the employers were represented by the employer bargaining agency. Thus, the Divisional Court dismissed the application for judicial review.

The applicants applied for and received leave to appeal the decision of the Divisional Court. The appeal is presently pending before the Court of Appeal.

***Karvon Construction Limited,***  
**Supreme Court of Ontario, Toronto Motions Court,**  
**October 1, 1982; Unreported**

The Board had certified the Labourer's Union, Local 183 with respect to certain employees of the employer. The employer sought to re-open the matter on the basis that it had not filed a reply or in any other manner opposed the application, relying on certain representations made to it by a member of the Board's staff. This request for re-opening was denied by the Board. In the interim, notice to bargain had been given, conciliation under the Act had been exhausted and lawful picketing of the employer's projects had commenced.

The employer applied for judicial review of the Board decision before a single judge of the High Court and also sought an injunction to restrain the picketing. The Court, taking into account the lack of action by the employer with respect to the original hearing before the Board and the fact that pursuant to a second request the Board had scheduled a hearing in the matter, the injunction was refused. The application was dismissed without prejudice to the right of the employer to bring a new application after the Board's disposition of the request for reconsideration.

***Maple Leaf Taxi Company Ltd.,***  
**Supreme Court of Ontario, Divisional Court,**  
**December 16, 1982; Unreported**

The trade union applied for certification with respect to certain owner-operators and taxi-drivers of the employer. The employer disputed the number of individuals subject to the application and also took the position that some or all of those individuals were not employees for purposes of the Act. In addition, the employer alleged that the union had misconducted itself in obtaining its membership evidence. After the appointment of a labour relations officer the parties had several meetings and were able to resolve all of the matters in dispute between them. The parties also agreed to dispose of the certification application without a hearing. In accordance with the agreement of the parties, the Board certified the trade union.

More than ten months after the date of certification, the employer requested that the Board reconsider and set aside the certificate. The employer contended that it was not initially represented by legal counsel in this matter and that if it had the benefit of legal advice, it would not have agreed to the Board's disposition of the matter. The Board stated that to accede to the employer's request for reconsideration would make nonsense of the settlement process and held that this was not an appropriate case for reconsideration.

Subsequently, the Board received an unfair labour practice complaint, whereby the union alleged that the employer was repudiating a collective agreement that had been entered into between the union and the employer. The employer contended that it was not bound by the agreement in question since the person who purported to sign on behalf of the employer had no authority to do so and that in any event the Board should defer this matter to arbitration. The Board reiterated its policy of not deferring to arbitration where there is an allegation of total repudiation of a first collective agreement and went on to find that the employer was bound by the collective agreement. The employer was directed to apply the agreement retroactively to its effective date.



The employer sought judicial review and a stay of the Board's decisions in both the certification and unfair labour practice matters. When the stay application came on for a hearing, it was dismissed on the ground that there was no *prima facie* case for a judicial review. The application for judicial review was subsequently withdrawn.

***Mechanical Contractors Association of Ontario,***  
**Supreme Court of Ontario, Divisional Court,**  
**May 2, 1982; Unreported**

The Mechanical Contractors Association of Ontario had applied to the Board for a cease and desist order alleging that the Plumbers' Local 463 had engaged in an unlawful strike contrary to section 148 of the Act. The Board found that the Union had violated that provision of the Act by continuing to engage in a strike for almost two weeks when they were aware that some affiliated bargaining agents had either not called or authorized a strike or had called or authorized a strike for a much shorter period and therefore issued a cease and desist order.

The Court, in dismissing an application for judicial review filed by the union seeking to set aside and quash this decision, commented that in the light of the province-wide bargaining provisions of the Act, the Board's interpretation of section 148 was reasonable.

***Medi-Park Lodges Inc.,***  
**Supreme Court of Ontario, Divisional Court,**  
**December 6, 1982; 83 CLLC ¶14,016; 17 A.C.W.S. (2d) 241**

In a previous decision in 1977, the Board had dismissed an application for certification filed by the Service Employees' Union, Local 204, holding that the employer's registered nurses exercised managerial functions within the meaning of s. 1(3)(b) of the *Labour Relations Act*. In 1980, when the Ontario Nurses Association applied for certification with respect to the same persons, the respondent's contention that the matter was *res judicata* as a result of the Board's prior decision, was rejected by the Board. In November, 1981 the Divisional Court dismissed the employer's application for judicial review to set aside this ruling of the Board. (See the Ontario Labour Relations board Annual Report, 1981-82).

The Board, in accordance with its usual practice had appointed a labour relations officer to inquire into the duties and responsibilities of the registered nurses in question. At the hearing, the Board received submissions from the parties on the officer's report and concluded that the registered nurses did not exercise managerial functions and were therefore employees under the Act. The employer sought to quash this finding by way of judicial review, on the ground that the Board exceeded its jurisdiction by considering extraneous matters in determining whether the persons in issue exercised managerial functions within the meaning of section 1(3)(b) of the Act.

The court stated that the determination that persons do not exercise managerial functions is a finding of fact within the Board's exclusive jurisdiction. The Court concluded that "the Board's reference to unionization in other facilities of the applicant, as well as the consideration of developing themes in relation to the role of professionals in collective bargaining are matters within the expertise of the Board which it can consider in evaluating the case before it." The court further stated that "The fact that the Board considered decisions made in earlier and other cases involving similar applications does not, in our view, constitute an examination of extraneous matters, but rather, a consideration of matters which the Board is perfectly entitled to consider when bringing its specialized knowledge and expertise in labour relations to bear on the



application for certification". In the result the Court concluded that the Board did not exceed its jurisdiction and the application was dismissed.

*Joseph Neblett and U.A., Local 46,*  
**Supreme Court of Ontario, Divisional Court,**  
**June 2, 1982; Unreported**

An application for judicial review of the Board's decision dismissing a complaint that the union had breached its duty of fair representation by maintaining two divisions within the Union, a commercial division and a residential division and by recommending members in its commercial division in priority over members in its residential division to commercial jobs, was filed by the unsuccessful complainant. In support of the application, the complainant tendered affidavit evidence relating to the merits of the complaint against the Union.

The Court rejected the affidavit evidence filed by the applicant and in dismissing the application held that there was no merit in the application for judicial review.

*Operative Plasterers' and Cement Masons' International Association, Local 214,*  
**Supreme Court of Ontario, Divisional Court,**  
**May 10, 1982; Unreported**

This was an application for judicial review brought by the Operative Plasterers' Local 124, seeking to set aside and quash a series of Board decisions, whereby the Labourers' Union, Local 527 was certified for units of labourers and cement masons with respect to employees of a number of employers. The applicant alleged that the Board had made fundamental errors of law and had exceeded its jurisdiction in a number of ways. The Court, in dismissing the application, held that there was no error in the Board's decision or in its interpretation of the Act.

*Sigal Shirt Company Limited*  
**Supreme Court of Ontario, Divisional Court,**  
**June 3, 1982; Unreported**

The Board held that notwithstanding a settlement reached between the parties of a previous unfair labour practice complaint, it would entertain evidence relating to the alleged employer conduct which was the subject of the settlement in a subsequent application for certification under s. 8. The Board held that this evidence would be permitted, not for the purpose of establishing a breach of the Act, but rather for the purpose of determining whether the true wishes of the employees are, in the circumstances, not likely to be ascertained.

The employer filed an application for judicial review of that decision and also sought an order staying the decision. The application for a stay was dismissed and employer subsequently discontinued the application for judicial review.

*Stage 212 Hotel, 010213 Ontario Limited,*  
**Supreme Court of Ontario, Divisional Court,**  
**March 22, 1983; Unreported**

The employer filed an application for judicial review of a Board decision certifying the trade union. The evidence before the Board was that certain employees had signed a petition opposing the union's certification application and at their request, the employer transmitted the petition to

the Board. In the process, the employer became aware of the contents of the document and thereafter at the Board hearing, the employer called the employee who represented the group of objecting employees, as its own witness.

The Board drew a distinction between a petition that is placed before the Board by the objecting employees and one which is submitted by an employer. The Board concluded that it would inquire into a petition only where it is filed by employees and therefore declined to do so in the circumstances of this case.

On judicial review the Court stated that it saw no error in the Board seeing fit to draw such a distinction and the application was dismissed.

## VII CASELOAD

In fiscal year 1982-83, the Board received a total of 2,762 applications and complaints, an increase of only 16 cases over the intake of 2,749 cases in 1981-82. Applications for certification of trade unions as bargaining agents, one of the three major categories of the Board caseload, decreased by 30 percent from last year's filings. However, the other two major categories—complaints of contravention of the Act and referrals of grievances under construction industry collective agreements—increased by 13 percent and 51 percent, respectively. (Tables 1 and 2).

In addition to the cases received, 427 were carried over from the previous year, making a total caseload of 3,189 in 1982-83. Of the total, 2,445, or 77 percent, were disposed of during the year; proceedings in 332 were adjourned sine die\* (without a fixed date for further action) at the request of the parties, and 412 were pending in various stages of processing at March 31, 1983.

The total number of cases processed during the year produced an average workload of 266 cases for the Board's full-time chairman and vice-chairmen, and the total disposition represented an average output of 204 cases.

### **Labour Relations Officer Activity**

In 1982-83, the Board's labour relations officers were assigned a total of 1,680 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 53 percent of the Board's total caseload, and included 276 certification applications, 39 cases concerning the status of individuals as employees under the Act, 695 complaints of alleged contraventions of the Act, 645 grievances under construction industry collective agreements, and 25 complaints under the Occupational Health and Safety Act. (Table 3).

The labour relations officers completed activity in 1,384 of the assignments, obtaining settlements in 1,213 or 88 percent. They referred 173 cases to the Board for decisions, proceedings were adjourned sine die in 93 cases, and settlement efforts were continuing in the remaining 203 cases at March 31, 1983.

Labour relations officers were also successful in having hearings waived by the parities in 155, or 70 percent, of 214 certification applications assigned for this purpose.

### **Representation Votes**

In 1982-83, the Board's returning officers conducted and counted the results of 200 representation votes held among employees in one or more bargaining units in cases that were either disposed of during the year or in which a final decision closing the case had not been issued by the Board by March 31, 1983. Of the total votes, 149 involved certification applications, and 51 were held in applications for termination of existing bargaining rights. (Table 5).

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\*The Board regards sine die cases as disposed of, although they are kept on docket for one year.

Forty-seven of the certification votes involved a single union on the ballot and 79 involved two unions. Of the two union votes, 78 entailed attempts to replace incumbent bargaining agents, and one involved two unions seeking to represent the same employees in collective bargaining for the first time.

A total of 11,473 employees were eligible to vote in the 200 elections held, of whom 9,153 or 80 percent, cast ballots. Of those who participated, 4,304 voted in favour of union representation and 4,849 against. Fifty-six percent of the employees who participated in the two-union certification elections voted for union representation, compared to 44 per cent who voted for union representation in the single-union elections.

### **Last Offer Votes**

In addition to taking votes ordered in its cases, the Board's Registrar was requested by the Minister to conduct votes among employees on employers' last offer for a settlement of a collective agreement dispute under section 40(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Registrar and field staff, because of their expertise and experience in conducting representation votes under the Act, are used to make the necessary arrangements for the orderly administration of votes directed by the Minister under that section.

Of the 21 requests received by the Minister during the fiscal year, votes were conducted in 17 situations, and 3 requests were withdrawn and settlement was reached in one case before the vote was taken.

Of the 17 votes held, employees accepted the employer's offer in 3 cases by 456 votes in favour and 341 against, and rejected the offer in 14 cases by 798 votes in favour and 1,958 against.

Since the section was introduced in June 1980, a total of 66 requests were made to the Minister up to March 31, 1983. The employer's offer was accepted in 7 cases and turned down in 35 cases. Settlements were reached in 20 cases and the request was withdrawn in 4 cases prior to a vote being conducted.

### **Hearings**

The Board held a total of 1,414 hearings and continuation of hearings in 1,078, or 34 percent of the 3,189 cases processed during the fiscal year, an increase of 144 sittings over the number held in 1981-82. Forty of the hearings were conducted by vice-chairman sitting alone, compared with 103 in 1981-82.

### **Processing Time**

Table 7 provides statistics on the time taken by the Board to process the 2,445 cases disposed of in 1982-83. Information is shown separately for the three major categories of cases handled by the Board: certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements.

Improvements were made over 1981-82 in the processing time of almost all categories of cases handled by the Board. A median of 27 days were taken to proceed from filing to disposition for the 2,445 cases completed in 1982-83, compared to 28 days in 1981-82. Certification



applications were processed in a median of 25 days, a drop of 4 days from 1981-82; complaints of contraventions of the Act took 29 days, compared to 31 days in 1981-82; referrals of construction industry grievances required 17 days, compared to 18 days in 1981-82; and the median time for the total of all other cases dropped to 60 days from 62 days in 1981-82.

More than 80 percent of all dispositions were accomplished in 84 days (3 months) or less, compared to 88 percent for certification applications, 79 percent for complaints of contraventions of the Act, 85 percent for referrals of construction industry grievances, and 62 percent for the total of all other types of cases. The number of cases requiring more than 169 days (6 months) to complete dropped to 199 from 228 in 1981-82.

### Adjournments

The following table illustrates the number of cases in each month where hearings were adjourned on the consent of all parties to the case, and the total delay they caused.

<b>Adjourned on Consent</b>		
<b>Month</b>	<b>Total Cases Involved</b>	<b>Total Delay (in Weeks)</b>
1982		
April	25	86
May	7	57½
June	24	120
July	26	86½
August	24	60½
September	17	146½
October	27	107½
November	19	53
December	21	59
1983		
January	29	74½
February	19	42½
March	8	23½
Total	276	917

### Certification of Bargaining Agents

In 1982-83, the Board received 758 applications for certification of trade unions as bargaining agents of employees, a drop of 331 or 30 percent from 1981-82. (Tables 1 and 2).

The applications were filed by 87 trade unions, including 22 employee associations. Ten of the unions, each with more than 20 applications, accounted for 65 percent of the total filings: Carpenters (100 cases), labourers (73 cases), Public Employees (CUPE) (62 cases), Service Employees International (60 cases), Teamsters (38 cases), International Operating Engineers (35 cases), Hotel Employees (34 cases), Retail Wholesale Employees (33 cases), Food and Commercial Workers (32 cases), and Ontario Public Service Employees (26 cases). In contrast, 68 percent of

the unions filed fewer than 5 applications, with the majority making just one application. These unions together accounted for 11 percent of the total certification filings. (Table 8).

Table 9 gives the industrial distribution of the certification applications received and disposed of during the year. Non-manufacturing industries accounted for 80 percent of the applications received, concentrated in construction (229 cases), health and welfare services (122 cases), accommodation and food services (54 cases), miscellaneous services (33 cases), and retail trade (30 cases). These five groups comprised 62 percent of the total non-manufacturing applications. Of the 154 applications involving establishments in manufacturing industries, 48 percent were in five groups: food and beverage (27 cases), metal fabricating (18 cases), clothing (15 cases), non-metallic mineral products (14 cases), and miscellaneous manufacturing (12 cases).

In addition to the applications received, 131 cases were carried over from last year, making a total certification caseload of 886 in 1982-83. Of the total, 767 were disposed of, proceedings were adjourned in 14 cases, and 108 cases were pending at March 31, 1983. Of the 767 dispositions, certification was granted in 514 cases including 37 in which interim certificates were issued under section 6(2) of the Act, and 4 that were certified under section 8; 142 cases were dismissed; proceedings were terminated in 4 cases; and 107 cases were withdrawn. The certified cases represented 67 percent of the total dispositions, compared to 65 percent in 1981-82.

Of the 656 applications that were either certified or dismissed, final decisions in 159 cases were based on the results of representation votes. Of the 156 votes conducted, 76 involved a single union on the ballot, and 80 were held between two unions, of which 79 affected incumbent bargaining agents and one involved two applicants with a choice of no representation. Applicants won in 78 of the votes and lost in the other 79.

A total of 10,789 employees were eligible to vote in the 156 votes, of whom 8,533 or 79 percent cast ballots. In the 78 votes that were won and resulted in certification, 3,785 or 81 percent of the 4,699 employees eligible to vote cast ballots, and of these voters 2,750 or 73 percent favoured union representation. In the 79 elections that were lost and resulted in dismissal, 4,748 or 78 percent of the 6,090 eligible employees participated, and of these only 33 percent voted for union representation. (Table 6).

Small bargaining units continued to be the predominant pattern of union organizing efforts through the certification process in 1982-83. The average size of the 514 applications that were certified was 27 employees, compared to 28 in 1981-82. Units in construction certifications averaged 6 employees compared to 7 in 1981-82, and in non-construction certifications they averaged 36 employees as in 1981-82. Eighty-two percent of the total certifications, including all except one in construction, involved units of fewer than 40 employees and about 50 percent applied to units of fewer than 10 employees. The total number of employees covered by the 514 certified cases dropped to 14,272 from 20,031 in 1981-82.

Improvements were made for the second consecutive year in the time taken by the Board to process applications in which certification was granted. A median time of 23 calendar days was required to complete the 514 certified cases from receipt to disposition, compared to 25 days in 1981-82. For non-construction certifications the median time was 24 days compared to 26 days in 1981-82, and for construction certifications the median time was 17 days, compared to 20 days in 1981-82.

Ninety-two percent of the 514 certified cases were disposed of in 84 days (3 months) or less, 85 percent took 56 days (2 months) or less, 64 percent required 28 days (one month) or less, and 49 percent were processed in 21 days (3 weeks) or less. Only 14 cases required longer than 168 days (6 months) to process, compared to 43 cases in 1981-82.

### **Termination of Bargaining Rights**

In 1982-83, the Board received 115 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions, 17 more than in 1981-82. In addition, 32 cases were carried over from 1981-82.

Of the total cases processed bargaining rights were terminated in 62 cases, 35 cases were dismissed, 21 were withdrawn, proceedings were terminated or adjourned sine die in 3 cases, and 26 cases were pending at March 31, 1983.

Unions lost the right to represent 1,399 employees in the 62 cases in which termination was granted, but retained bargaining rights for 1,829 employees in the 56 cases that were either dismissed or withdrawn.

Of the 97 cases that were either granted or dismissed, dispositions in 46 were based on the results of representation votes. A total of 1,309 employees were eligible to vote in the 48 elections that were held, of whom 1,203 or 92 percent cast ballots. Of those who cast ballots, 315 voted for continued representation by unions and 666 voted against.

### **Declaration of Successor Trade Union**

In 1982-83, the Board dealt with 10 applications for declarations under section 62 of the Act on the bargaining rights of successor trade unions resulting from a union merger or transfer of jurisdiction.

Affirmative declarations were issued by the Board in 7 cases, 7 cases were dismissed, and one was withdrawn.

### **Declaration of Successor or Related Employer**

In 1982-83, the Board dealt with 107 applications for declarations under section 63 of the Act on the bargaining rights of trade unions at successor employers resulting from a business sale, or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the Board in 15 cases, 49 cases were either settled or withdrawn by the parties, 14 cases were dismissed, 14 were adjourned sine die, and 23 were pending at March 31, 1983.

### **Accreditation of Employer Organizations**

Three applications were processed under sections 125 through 127 of the Act for accreditation of employer organizations as bargaining agents of employers in the construction

industry. Accreditation was granted in two cases to represent 60 companies employing 391 construction workers, and one case was dismissed.

### **Declaration and Direction of Unlawful Strike**

In 1982-83, the Board dealt with 21 applications seeking directions under section 92 of the Act against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 3 cases, 13 cases were withdrawn, 3 were adjourned sine die, and 2 were pending at March 31, 1983.

Fifty-four applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. Directions were issued in 14 cases, 4 cases were dismissed, 23 were either withdrawn or settled by the parties, proceedings were terminated in 2 cases, and 11 cases were adjourned sine die.

### **Declaration and Direction of Unlawful Lock-out**

Three applications were processed in 1982-83, seeking declarations under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. One case was dismissed, one was withdrawn, and one was pending at March 31, 1983.

### **Complaints of Contravention of Act**

Complaints alleging contraventions of the Act may be filed with the Board for processing under section 89 of the Act. Such cases have increased substantially since 1975. In handling these cases the Board emphasizes voluntary settlements by the parties involved with the assistance of a labour relations officer.

In 1982-83, the Board received 724 section 89 complaints, an increase of 13 percent over the 640 filed in 1981-82. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees for union activity in violation of sections 64 and 66 of the Act, illegal changes in wages and working conditions contrary to section 79, and failure to bargain in good faith under section 15. They were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

In addition to the complaints received, 101 cases were carried over from 1981-82. Of the 825 total processed, 674 were disposed of, proceedings were adjourned sine die in 38 cases, and 113 cases were pending at March 31, 1983.

In 549 or 82 percent of the 674 dispositions, voluntary settlements and withdrawal of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 41 cases, 74 cases were dismissed, and proceedings were terminated in the remaining 10 cases.

In the settlements secured by labour relations officers compensation amounting to more than \$241,800 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 41 cases in which violations of the Act were found by the board, employers and unions were ordered to pay full compensation to 97 employees for wages and benefits lost in a specified period.



Seventy-nine of the employees were also ordered reinstated, and 10 others for whom no monetary remedy was awarded.

In addition, employers in 22 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 11 other cases.

### **Construction Industry Grievances**

Grievances over alleged violation of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 124 of the Act. As with complaints of contraventions of the Act, the Board emphasizes voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

In 1982-83, the Board received 831 cases under section 124, and increase of 51 percent over the 551 filed in 1981-82. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and deduction of union dues, and alleged violation of the sub-contracting and hiring arrangements.

In addition to the cases received, 75 were carried over from 1981-82. Of the 906 total processed, 577 were disposed of, proceedings were adjourned sine die in 243 cases, and 86 cases were pending at March 31, 1983.

In 510 or 88 percent of the 577 dispositions, voluntary settlements and withdrawal of the grievance were obtained by labour relations officers (Table 4), awards were made by the Board in 34 cases, 24 cases were dismissed and proceedings were terminated in the remaining 9 cases.

Payments totalling more than \$976,500 were recovered for unions and employees in the cases settled by labour relations officers and those in which Board awards were made.

## **MISCELLANEOUS APPLICATIONS AND COMPLAINTS**

### **Rights of Access**

In 1982-83, the Board dealt with two applications in which the union sought access to the employer's property under section 11 of the Act. Access was granted in one case and the other case was pending at March 31, 1983.

### **Religious Exemption**

Twelve applications were processed under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemption was granted in 4 cases, 6 cases were dismissed, one was withdrawn, and one was pending at March 31, 1983.

### **Early Termination of Collective Agreements**

Fifteen applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 10 cases, and 5 were pending at March 31, 1983.

### **Union Financial Statements**

Twelve complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements on the union's affairs. Proceedings were terminated in 3 cases, 2 cases were settled, and 7 were pending at March 31, 1983.

### **Jurisdictional Disputes**

Forty-four complaints were dealt with under section 91 of the Act, involving union work jurisdiction. An assignment of the work in dispute was made by the Board in 6 cases, 4 cases were dismissed, 9 were settled or withdrawn, proceedings were terminated or adjourned sine die in 10 cases, and 15 cases were pending at March 31, 1983.

### **Determination of Employee Status**

The Board dealt with 66 applications under section 106 (2) of the Act, seeking decisions on the status of individuals as employees under the Act. Thirty-six cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by the Board in 14 cases, in which 9 of the 23 persons in dispute were found to be employees under the Act. Proceedings were terminated or adjourned sine die in 7 cases, and 9 cases were pending at March 31, 1983.

### **Referrals by Minister of Labour**

In 1982-83, the Board dealt with 16 cases referred by the Minister under section 107 of the Act for opinions on questions related to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under section 44 or 45. Determinations were made in 12 cases, in 9 of which the Board declared the Minister's authority to appoint a conciliation officer, one case was settled by the parties, proceedings were terminated in two cases and one case was pending at March 31, 1983.

The Board dealt with two cases referred by the Minister under section 139(4) of the Act, concerning the designations of an employee bargaining agency and an employer bargaining agency in the industrial, commercial and institutional sector of the construction industry. The Board advised the Minister that a change was appropriate to the designation of the employer bargaining agency in one case, and that no change was warranted to the designation of the employee bargaining agency in the other case.

### **Trusteeship Reports**

Five statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

### **Occupational Health and Safety Act**

In 1982-83, the Board received 26 complaints under section 24 of the *Occupational Health and Safety Act*, alleging wrongful discipline or discharge of employees for acting compliance with this Act. Five cases were carried over from 1981-82.

Of the total cases processed, 21 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4), 2 were granted and 2 were dismissed by the Board, and the remaining 6 were pending at March 31, 1983.

### **Colleges Collective Bargaining Act**

In 1982-83, the Board received 26 complaints under section 24 of the *Occupational Health and Safety Act*, alleging wrongful discipline or discharge of employees for acting in compliance with this Act. Five cases were carried over from 1981-82.

Three applications were dealt with under section 82 of the Act for decisions on the status of individuals as employees under the Act. Two cases were settled with the assistance of a labour relations officer, and in the other case the Board determined that the six employees involved were not included in the bargaining unit.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt by the Board are included in Table 1.

## VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The *Ontario Labour Relations Board Monthly Report*, a monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

*A Guide to the Ontario Labour Relations Act*, a booklet explaining in laymen's terms the provisions of the *Labour Relations Act* and the Board's practices. This publication is revised periodically to reflect current law and Board practices. The Guide is available in French.

*Monthly Highlights*, a publication in leaflet form containing brief summaries of significant Board decisions on a monthly basis. This new publication which commenced during the year under review also contains Board notices of interest to the industrial relations community and information relating to new appointments, retirements and other internal developments.

*Pamphlets*, the two pamphlets published by the Board to date ("Rights of Employees, Employers, and Trade Unions" and "Certification by the Ontario Labour Relations Board") have been well received. These pamphlets have been translated into French, Italian and Portuguese. The Board will shortly be publishing a third pamphlet entitled, "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board."

During the year, the Board published a revised construction industry map depicting the geographic areas in the province used by the Board in certification applications relating to the construction industry.

All of the Board's publications may be obtained by calling, writing, or visiting the Board's offices.



## **IX                STAFF AND BUDGET**

At the end of the fiscal year 1982-83, the Board employed a total of 94 persons on a full time basis. The Board has two types of employees. The Chairman, Alternate-Chairman, Vice-Chairmen and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$4,272,800.00.

## X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1982-83.

- |           |  |
|-----------|--|
| Table 1:  | Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1982-83                     |
| Table 2:  | Applications and Complaints Received and Disposed of, Fiscal Years 1978-79 to 1982-83                        |
| Table 3:  | Labour Relations Officer Activity in Cases Processed, Fiscal Year 1982-83                                    |
| Table 4:  | Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1982-83                               |
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| Table 8:  | Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1982-83               |
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| Table 10: | Size of Bargaining Units in Certification Applications Granted, Fiscal Year 1982-83                          |
| Table 11: | Time Required to Process Certification Applications Granted, Fiscal Year 1982-83                             |

Table 1

### Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1982-83

Type of Case	Caseload			Disposed of Fiscal Year 1982-83									Pending March 31, 83
	Total	Pending April 1, 82	Received Fiscal Year 1982-83	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die			
Total	3,189	427	2,762	2,445	731	321	49	554	790	332	412		
Certification of Bargaining agents	889	131	758	767	514	142	4	107	—	14	108		
Declaration of Termination of Bargaining Rights	147	32	115	120	62	35	2	21	—	1	26		
Declaration of Successor Trade Union	10	6	4	10	4	5	—	1	—	—	—		
Declaration of Successor Employer or Common Employer Status	107	23	84	72	18	10	2	25	17	9	26		
Accreditation	3	2	1	3	2	1	—	—	—	—	—		
Declaration of Unlawful Strike	—	—	—	—	—	—	—	—	—	—	—		
Declaration of Unlawful Lockout	3	—	3	2	—	—	1	1	—	—	1		
Direction respecting Unlawful Strike	75	1	74	59	17	4	2	31	5	14	2		
Direction respecting Unlawful Lockout	3	1	2	2	—	1	—	1	—	—	1		
Consent to Prosecute	21	3	18	17	—	1	10	6	—	—	4		
Contravention of Act	825	101	724	674	41	74	10	221	328	38	113		
Right to Access	2	—	2	1	1	—	—	—	—	—	1		
Exemption from Union Security Provision in Collective Agreement	12	3	9	11	4	6	—	1	—	—	1		
Early Termination of Collective Agreement	15	1	14	10	10	—	—	—	—	—	5		
Trade Union Financial Statement	12	—	12	5	—	—	3	—	2	—	7		
Jurisdictional Dispute	44	20	24	22	6	4	3	6	3	7	15		
Referral on Employee Status	66	16	50	51	6	8	1	20	16	6	9		

Table 1 (Cont'd.)

**Total Applications and Complaints Received, Disposed of and Pending  
Fiscal Year 1982-83**

Referral from Minister on Appointment of Conciliation Officer or Arbitrator	16	6	10	15	9	3	2	—	1	—	1
Referral of Construction Industry Grievance	906	75	831	577	34	24	9	104	406	243	86
Referral from Minister on Construction Bargaining Agency Complaint under <i>Occupational Health and Safety Act</i>	2	1	1	2	1	1	—	—	—	—	—
	31	5	26	25	2	2	—	9	12	—	6

\* Includes cases in which a request was granted or a determination made by the Board.



Table 2

### Applications and Complaints Received and Disposed of Fiscal Years 1978-79 to 1982-83

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1978-79	1979-80	1980-81	1981-82	1982-83	Total	1978-79	1979-80	1980-81	1981-82	1982-83
<b>Total</b>	<b>13,008</b>	<b>2,179</b>	<b>2,482</b>	<b>2,836</b>	<b>2,749</b>	<b>2,762</b>	<b>12,083</b>	<b>2,071</b>	<b>2,248</b>	<b>2,711</b>	<b>2,608</b>	<b>2,445</b>
Certification of bargain- ing agents	5,154	1,019	1,136	1,152	1,089	758	5,171	1,022	1,103	1,178	1,101	767
Declaration of termination of bargaining rights	502	115	70	104	98	115	491	110	72	111	78	120
Declaration of successor trade union of employer	276	74	50	55	50	47	256	61	55	54	35	51
Declaration of common employer status	166	22	30	37	36	41	144	26	28	29	30	31
Accreditation	7	—	3	2	1	1	12	1	3	5	—	3
Declaration of unlawful strike or lockout	37	9	15	6	4	3	35	12	11	7	3	2
Directions respecting unlawful strike or lockout	373	84	78	76	59	76	255	62	51	47	34	61
Consent to prosecute	162	57	48	22	17	18	152	52	50	23	10	17
Contravention of Act	3,130	454	607	705	640	724	2,924	402	522	704	622	674
Referral of construction industry grievance	2,458	238	321	517	551	831	1,944	203	227	421	516	577
Miscellaneous	743	107	124	160	204	148	699	120	126	132	179	142

**Table 3****Labour Relations Officer Activity in Cases Processed\***  
**Fiscal Year 1982-83**

Type of Case	Cases in Which Activity Completed						
	Total Cases Assigned	Settled		Referred to Board	Sine Die	Pending	
		Total	Number				
<b>Total</b>	<b>1,680</b>	<b>1,384</b>	<b>1,213</b>	<b>87.6</b>	<b>173</b>	<b>93</b>	<b>203</b>
Certification							
Interim certificate	33	20	20	100.0	—	2	11
Pre-hearing application	76	71	65	91.5	6	—	5
Other application	167	153	108	70.6	45	—	14
Contravention of Act	695	566	496	87.6	71	35	93
Construction industry grievance	645	519	476	91.7	43	52	74
Employee status	39	38	27	71.1	7	4	1
Occupational Health and Safety Act	25	20	19	95.0	1	—	5

\* Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.

**Table 4**
**Labour Relations Officer Settlements in Cases Disposed of\***  
**Fiscal Year 1982-83**

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
<b>Total</b>	<b>1,327</b>	<b>1,116</b>	<b>84.1</b>
Contravention of Act	674	549	81.5
Construction industry grievance	577	510	88.3
Employee status	51	36	70.6
Occupational Health and Safety Act	25	21	84.0

\* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

**Table 5**
**Results of Representation Votes Conducted\***  
**Fiscal Year 1982-83**

	Number of Votes	Eligible Employees	Ballots Cast		
			Total	For Unions	Against Unions
<b>Total</b>	<b>200</b>	<b>11,473</b>	<b>9,153</b>	<b>4,304</b>	<b>4,849</b>
Certification	149	10,133	7,928	3,982	3,946
Pre-hearing cases					
One union	30	3,892	2,793	1,196	1,597
Two unions	70	4,670	3,726	2,045	1,681
Construction cases					
One union	4	52	43	11	32
Two unions	2	33	29	14	15
Regular cases					
One union	36	1,159	1,028	500	528
Two unions	7 <sup>1</sup>	327	309	216	93
Termination of Bargaining Rights	51	1,340	1,225	322	903

\* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

<sup>1</sup> Includes one vote with a "no-union" choice.



Table 6

### Results of Representation Votes in Cases Disposed of\* Fiscal Year 1982-83

Type of Case	Number of Votes			Eligible Voters			All Ballots Cast			Ballots Cast in Favour of Unions		
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
<b>Total</b>	<b>205</b>	<b>83</b>	<b>122</b>	<b>12,098</b>	<b>4,963</b>	<b>7,135</b>	<b>9,736</b>	<b>4,007</b>	<b>5,729</b>	<b>4,621</b>	<b>2,871</b>	<b>1,750</b>
Certification	157	78	79	10,789	4,699	6,090	8,533	3,785	4,748	4,306	2,750	1,556
Pre-hearing cases												
One union	33	14	19	3,873	1,044	2,829	2,780	595	2,185	1,193	448	745
Two unions	71	44	27	5,008	2,788	2,220	4,045	2,398	1,647	2,251	1,764	487
Construction cases												
One union	4	—	4	52	—	52	43	—	43	11	—	11
Two unions	2	1	1	33	11	22	29	10	19	14	7	7
Regular cases												
One union	40	15	25	1,496	583	913	1,327	526	801	621	336	285
Two unions	7 <sup>1</sup>	4	3	327	273	51	309	256	53	216	195	21
Termination of Bargaining Rights	48	5	43	1,309	264	1,045	1,203	222	981	315	121	194

\* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

<sup>1</sup> Includes one vote with a "no-union" choice.

Table 7

Time Required to Process Applications and Complaints Disposed of, by Major type of Case  
Fiscal Year 1982-83

Time Taken (Calendar Days)	All Cases		Certification Cases		Section 89 Cases		Section 124 Cases		All Other Cases	
	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent
Total	2,445	—	767	—	674	—	577	—	427	—
Under 8 days	76	3.1	17	2.2	15	2.2	21	3.6	23	5.4
8-14 days	388	19.0	94	14.5	69	12.5	199	38.1	26	11.5
15-21 days	521	40.3	227	44.1	130	31.8	136	61.7	28	18.0
22-28 days	284	51.9	100	57.1	123	50.0	35	67.8	26	24.1
29-35 days	197	60.0	41	62.5	90	63.4	28	72.6	38	33.0
36-42 days	123	65.0	49	68.8	28	67.5	15	75.2	31	40.3
43-49 days	89	68.6	41	74.2	14	69.6	15	77.8	19	44.7
50-56 days	83	72.0	31	78.2	20	72.6	15	80.4	17	48.7
57-63 days	54	74.2	25	81.5	10	74.0	9	82.0	10	51.1
64-70 days	57	76.6	16	83.6	16	76.4	9	83.5	16	54.8
71-77 days	56	78.9	21	86.3	11	78.0	7	84.7	17	58.8
78-84 days	35	80.3	9	87.5	9	79.4	4	85.4	13	61.8
85-91 days	32	81.6	8	88.5	5	80.1	7	86.6	12	64.6
92-98 days	29	82.8	5	89.2	7	81.2	5	87.5	12	67.4
99-105 days	41	84.5	10	90.5	13	83.1	4	88.2	14	67.9
106-126 days	75	87.5	12	92.0	21	86.2	14	90.6	28	74.5
127-147 days	70	90.4	12	93.6	28	90.4	9	92.2	21	82.2
148-168 days	36	91.9	6	94.4	11	92.0	10	93.9	9	84.3
Over 168 days	199	100.0	43	100.0	54	100.0	35	100.0	67	100.0

Table 8

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1982-83**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Unions</b>	<b>758</b>	<b>767</b>	<b>514</b>	<b>146</b>	<b>107</b>
<b>CLC* Affiliates</b>	<b>370</b>	<b>377</b>	<b>247</b>	<b>81</b>	<b>49</b>
Aluminum Brick and Glass Workers	2	1	1	—	—
Auto Workers	13	13	10	1	2
Bakery and Tobacco Workers	2	2	2	—	—
Canadian Brewery Workers	12	10	7	3	—
Canadian Paperworkers	6	9	4	5	—
Canadian Public Employees (CUPE)	62	67	41	11	15
Cement Workers	1	1	1	—	—
Clothing and Textile Workers	2	4	2	2	—
Communications Workers	1	—	—	—	—
Electrical Workers (IUE)	1	—	—	—	—
Electrical Workers (UE)	6	2	1	1	—
Energy and Chemical Workers	15	14	7	6	1
Food and Commercial Workers	32	33	28	3	2
Glass, Pottery and Plastic Workers	1	—	—	—	—
Graphic Arts Union	2	6	4	2	—
Hotel Employees	34	31	15	9	7
Ladies Garment Workers	7	7	2	4	1
Machinists	6	7	4	2	1
Molders	1	2	1	1	—
Newspaper Guild	4	4	4	—	—
Novelty Workers	2	4	—	3	1
Office and Professional Employees	1	2	1	—	1
Ontario Public Service Employees	26	27	24	3	—
Pattern Makers	2	2	1	—	1
Plate Printers	1	1	—	—	1
Printing and Graphic Union	1	1	—	—	1
Public Service Alliance	1	1	1	—	—
Railway Clerks	1	1	1	—	—
Railway, Transport and General Workers	1	3	3	—	—
Retail Wholesale Employees	33	28	20	7	1
Rubber Workers	3	3	2	—	1
Service Employees International	60	58	40	11	7

Table 8 (Cont'd.)

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**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1982-83**


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Threatrical Stage Employees	2	2	1	1	—
Transit Union	1	1	1	—	—
Typographical Union	3	3	2	1	—
United Steelworkers	19	23	14	4	5
United Textile Workers	2	1	—	—	1
Woodworkers	1	3	2	1	—

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\* Canadian Labour Congress



Table 8 (Cont'd.)

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1982-83**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>Non-CLC Affiliates</b>	<b>388</b>	<b>390</b>	<b>267</b>	<b>65</b>	<b>58</b>
Aerospace Communications Employees	1	—	—	—	—
Asbestos Workers*	1	1	—	1	—
Boilermakers*	4	3	1	1	1
Bricklayers International	5	5	3	—	2
Carpenters*	100	88	56	14	18
Canadian Educational Workers	2	2	—	2	—
Canadian Operating Engineers	8	8	5	3	—
Canadian Restaurant Employees	2	2	1	—	1
Canadian Steelworkers	1	1	1	—	—
Christian Labour Association	16	18	16	1	1
CNTU Directly Chartered	1	1	1	—	—
Electrical Workers (IBEW)*	10	11	9	2	—
Food and Service Workers	3	3	3	—	—
Guards Association	1	1	1	—	—
Headwear Workers	12	12	6	4	2
Independent Local Union	22	20	14	2	4
International Operating Engineers*	35	33	26	2	5
Labourers*	73	95	57	26	12
National Council of Canadian Labour	2	2	2	—	—
Ontario Nurses Association	10	13	13	—	—
Painters*	16	16	13	—	3
Plant Guard Workers	1	1	—	—	1
Plasterers*	1	—	—	—	—
Plumbers*	3	2	2	—	—
Sheet Metal Workers*	8	7	3	1	3
Structural Iron Workers*	6	6	4	1	1
Teamsters	38	35	27	4	4
Textile Processors	6	4	3	1	—

\* These construction unions were reported as CLC (Canadian Labour Congress) affiliates in the 1981-82 report. In April 1982, following suspension by the Congress of its 12 building trades affiliates, the Asbestos Workers, Boilermakers, Bricklayers, Electrical Workers (IBEW), International Operating Engineers, Painters, Plasterers, Plumbers and Sheet Metal Workers joined with the Elevator Constructors to form the Canadian Federation of Labour. The Carpenters, Labourers, and Structural Iron Workers have not joined the Federation.

**Table 8 (Cont'd.)**


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**Union Distribution of Certification Applications Received and Disposed of**  
**Fiscal Year 1982-83**


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Business services	3	5	5	—	—
Personal services	6	6	5	1	—
Accommodation, food services	54	49	28	12	9
Miscellaneous service	33	32	21	3	8
Local government	7	10	7	—	3

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Table 9

**Industry Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1982-83**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Industries</b>	<b>758</b>	<b>767</b>	<b>514</b>	<b>146</b>	<b>107</b>
<b>Manufacturing</b>	<b>154</b>	<b>159</b>	<b>105</b>	<b>36</b>	<b>18</b>
Food, beverages	27	24	18	6	—
Tobacco products	1	—	—	—	—
Rubber, plastic products	5	4	4	—	—
Leather industries	—	—	—	—	—
Textile mill products	1	—	—	—	—
Knitting mills	3	3	1	1	1
Clothing industries	15	17	5	9	3
Wood products	4	6	5	—	1
Furniture, fixtures	5	6	4	1	1
Paper, allied products	4	7	3	4	—
Printing, publishing	11	13	10	1	2
Primary metal industries	6	6	4	1	1
Metal fabricating industries	18	20	11	4	5
Machinery, except electrical	9	10	7	2	1
Transportation equipment	8	8	8	—	—
Electrical products	6	4	2	2	—
Non-metallic mineral products	14	14	12	1	1
Petroleum, coal products	—	—	—	—	—
Chemical, chemical products	5	5	4	1	—
Miscellaneous manufacturing	12	12	7	3	2
<b>Non-Manufacturing</b>	<b>604</b>	<b>608</b>	<b>409</b>	<b>110</b>	<b>89</b>
Agriculture	—	—	—	—	—
Forestry	2	2	—	2	—
Mining, quarrying	7	5	4	1	—
Construction	229	231	150	43	38
Transportation	27	27	17	8	2
Storage	6	6	6	—	—
Communications	1	—	—	—	—
Electric, gas, water	10	13	10	1	2
Wholesale trade	23	23	16	3	4
Retail trade	30	27	19	5	3
Finance, insurance	2	3	2	—	1
Real Estate	16	17	13	2	2
Education, related services	23	25	14	5	6
Health, welfare services	122	124	91	23	10
Religious organizations	—	—	—	—	—
Recreational services	3	3	1	1	1

Table 10

**Size of Bargaining Units in Certification Applications Granted  
Fiscal Year 1982-83**

Size of Bargaining Unit (Number of Employees)	Total		Construction		Non-Construction	
	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees
<b>Total, all sizes</b>	<b>514</b>	<b>14,272</b>	<b>134*</b>	<b>740</b>	<b>380</b>	<b>13,532</b>
2-9 employees	256	1,230	119	473	137	757
10-19 employees	94	1,265	11	139	83	1,126
20-39 employees	70	1,969	3	74	67	1,895
40-99 employees	62	3,867	1	54	61	3,813
100-199 employees	21	2,713	—	—	21	2,713
200-499 employees	11	3,228	—	—	11	3,228
500 employees	—	—	—	—	—	—

\* Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 150 certified construction industry applications shown in Table 9, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.



Table 11

**Time Required to Process Certification Applications Granted\***  
**Fiscal Year 1982-83**

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
<b>Total</b>	<b>514</b>	<b>—</b>	<b>380</b>	<b>—</b>	<b>134</b>	<b>—</b>
Under 8 days	1	0.2	1	0.3	—	—
8-14 days	70	13.8	17	4.7	53	39.6
15-21 days	179	48.6	142	42.1	37	67.2
22-28 days	80	64.2	70	60.5	10	74.6
29-35 days	31	70.2	25	67.1	6	79.1
36-42 days	35	77.0	30	75.0	5	82.8
43-49 days	23	81.5	19	80.0	4	85.8
50-56 days	15	84.4	13	83.4	2	87.3
57-63 days	14	87.2	12	86.6	2	88.8
64-70 days	7	88.5	5	87.9	2	90.3
71-77 days	12	90.9	10	90.5	2	91.8
78-84 days	6	92.0	5	91.8	1	92.5
85-91 days	3	92.6	3	92.6	—	—
92-98 days	—	—	—	—	—	—
99-105 days	7	94.0	6	94.2	1	93.3
106-126 days	7	95.3	4	95.3	3	95.5
127-147 days	6	96.5	5	96.6	1	96.3
148-168 days	4	97.3	3	97.4	1	97.0
169 days and over	14	100.0	10	100.0	4	100.0

\* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.

## APPENDIX

### *The Labour Relations System in a Time of Economic Crisis*

Paper Presented by George W. Adams, Q.C.,  
Chairman, Ontario Labour Relations Board  
to the P.A.T. Conference in Toronto, April 6, 1983.

The current economic recession is the most severe post-war downturn that Canada and the United States have faced. In February 1983, for example, total unemployment in Canada was 1,585,000 or 13.5% of the Canadian labour force. Even on a seasonally-adjusted basis the unemployment rate was 12.5 percent; rates for particular Ontario cities are, as we know, even more alarming. The number of people who have registered at Canada Manpower Centres and who are out of work doubled from January, 1982 to the end of that year. During the same period there was a 130% increase in establishments reporting layoffs and an unprecedented number of bankruptcies. Real output has continued to fall as has business investment in plant and equipment. Excess plant capacity and eroding corporate liquidity led to hefty cutbacks in outlays by firms in 1982. Consumer demand has not yet responded to lower interest rates. The O.E.C.D. December, 1982 outlook did not see the likelihood of a significant recovery in activity during the projection period. All of this has provoked remarkably mixed and vociferous reactions.

There are those who emphasize supply side economics; others recommend massive public expenditure; union bashing is generally popular; and we have the New Year statement by the Canadian Catholic Conference of Bishops calling for a new moral economic order which would give first priority to the real victims of the current recession—an order which is seen by the Bishops as placing human dignity above profit maximization. Few institutions in Canadian society are escaping the impact of the recession. Adjustments generally are being made; goals and priorities are having to be reconsidered.

It is in this context that the performance of the collective bargaining system must be appraised. It is only one of several key economic institutions in Canada facing this world-wide recession and related change. Its contribution to a significant economic recovery therefore should not be overestimated. On the other hand, the failure of collective bargaining to adjust would have significant adverse consequences for the Canadian economy and for the collective bargaining system itself. Recently, newspaper reports have contrasted the approach of Canadian trade unions to the recession with their counterparts in the United States. The picture has been painted of widespread concessionary agreements in the United States and of resistance to this approach by more militant Canadian trade unions regardless of economic circumstances. This image has gained credibility by the "no concession" stance taken by the Canadian Labour Congress last May and the public assertion by certain trade union leaders that workers "don't need a union to help them to walk backwards, they can do that themselves". If these images were accurate, the United States would be on the brink of fundamental change in its labour relations based on accommodation and Canada would be on the brink of equally fundamental change by reason of disaster. Moreover, the legal system in Canada regulating labour relations—collective bargaining—would merit a complete review to the extent that it contributed to Canada's plight. The position I wish to take in this presentation is that a closer examination of the facts suggests that these public accounts of collective bargaining trends in Canada and the United States are misleading and that the labour relations process in both countries is responding to the economic realities as best it can.

Generally differences between the two countries appear no more significant than differences between industries and individual bargaining relationships within the respective jurisdictions. Differences that do exist are less related to the different ideologies of the two trade union movements and more to the value of the Canadian dollar, the major economic policies chosen by the respective countries in areas such as oil pricing, and deregulation, etc.; differing pension and health care costs; and the overall health of certain Canadian industries in comparison to their U.S. counterparts, i.e., steel, auto, trucking, and airlines.

In both countries collective bargaining has sorted out the real need for labour relations change and adjustments to pressing circumstances have been made. The high profile concessionary situations have of course occurred in the United States beginning with the Chrysler loans. The Chrysler deal and foreign competition in turn gave rise to the Ford and General Motors pacts. Deregulation, non-union competition and the recession then lead to the Master Freight Agreement. Similar forces resulted in a number of concessionary airline labour agreements such as Pan Am. Subsequently, the steel industry, having closed, scheduled to close or reorganized upwards of 215 plants and at its lowest capacity since the 1930's, followed suit.

What is interesting from a labour relations point of view, however, is that all of these situations involved key conditions in return for the very significant financial concessions granted. To varying degrees these conditions included:

- (a) Financial books had to be opened.
- (b) Equality of sacrifice had to be demonstrated with respect to shareholders, management, and non-union staff.
- (c) A commitment by management had to be made to the industry with respect to the allocation of savings attributed to concessions.
- (d) Job and income security arrangements were agreed to, involving limitations on subcontracting, plant closings, enhanced S.U.B. and other benefits for those laid off.
- (e) In many instances, restorative schemes were agreed to by the end of the contract.
- (f) And finally, new relationships were agreed to involving:
  - (i) the institution of profit sharing schemes;
  - (ii) the institution or expansion of quality of working life projects;
  - (iii) the extension of justice and dignity clauses; and
  - (iv) the launching of experimental lifetime employment projects.

To be sure, these cases demonstrate the changing focus of collective bargaining from improved compensation to enhanced job security. This, however, is not a new phenomenon in the context of an economic downturn, particularly where the survival of the enterprise is at stake and the average worker's job is threatened. But these cases also illustrate that employees do indeed benefit by having trade unions "walk backwards" with them and that much of the militant talk on both sides of the border is just that—talk. Indeed, because of the scale of the industries involved, so-called concession bargaining may be ushering in a new era of more collaborative industrial relations. Labour and management in these relationships are more likely to appreciate the interrelatedness of their interests. In good times, these parties believed they could afford to pursue their adversarial interests. The current economic climate would appear to have brought about changes in attitudes to permit such things as extensive managerial disclosure and union participation in running the enterprise. This might be viewed as an incremental step towards greater labour-management co-operation as exists in Japan, West Germany, Austria and Sweden. Many of these same industries were the first to adopt collective bargaining in the 30's and 40's—so who knows!



Realistically, however, the concession experience in the United States has been checkered. Early opening or reopening of collective agreements has been rejected in many industries and only a small proportion of recent U.S. negotiations has directly involved some form of concessions. In 1981 major U.S. settlements produced the highest average annual wage increase recorded in more than ten years (7.9 per cent). Moreover, if the auto and trucking agreements are excluded, the remaining U.S. settlements for the first quarter of 1982 averaged out to an annual increase of 6.8 per cent. Major concession situations have therefore been crisis situations and have not established a pattern for plants, companies or industries with lesser problems. To some extent this explains the absence of high profile counterparts in Canada although there have been numerous general settlements involving trade offs between freezes, suspended COLA's, and outright cuts and job security.

This in turn, however, reveals another consequence of recession bargaining—the eroding of pattern settlements. Instead, collective agreements are being custom-fitted to the employer, plant or industry involved. A classic illustration of this may be the Canadian auto negotiations where differences in the dollar, productivity and utilization levels, and pension and welfare costs dictated a more moderate concessionary agreement. In turn, however, the Canadian auto workers did not obtain the same kind of job guarantees.

Even where major concessions and job guarantees have not been appropriate, the general effects of the recession have encouraged management in unionized industries to be much more cost sensitive and thus more interested in flexibility or cross-utilization of classifications and in making demands for change of its own. Many restrictive rules originally developed when companies insisted on job segmentation. By developing more and more specialists, it was hoped to cut the costs of training multi-faceted employees. However, the reduced training costs have been more than offset by the high cost of not being able to fully utilize the employees. Today, with appropriate training guarantees, parties are agreeing to broader banded jobs with key productivity and quality of work life spinoffs.

In this respect I note that Professors McKersie and Kochan have observed that during the past twenty years of unprecedented growth in North America, labour relations managers in unionized corporations became more and more isolated, conservative and less influential. Because they were primarily concerned with maintaining stable and peaceful relations, they did not make concerted attempts to change work practices or to change significantly wage and fringe benefit formulas or patterns. Similarly, they did not readily accept the need to introduce direct strategies for involving workers and unions in efforts to improve the quality of working life and productivity in their organizations. They remained focused on traditional and reactive activity at the bargaining table and in the grievance procedure. This has in many instances changed.

The recession has forged a greater link between business policy and industrial relations in many organizations and contributed to this change. Financial pressures articulated by finance and business personnel have had to be translated by labour relations managers into effective short-run and long-run labour relations strategies, be they demands for concessions, a more flexible and productive use of manpower, or a more effective administration of absenteeism, down-time, wastage or training. Thus, the industrial relations function within many companies is undergoing significant change as a search is made for new strategies that link industrial relations performance to larger business strategies of the firm.



Related developments have been the increasing interest in more effective communication with trade unions leaders and employees and quality of working life and job security initiatives to improve employee commitment and productivity. Improved communication schemes with the trade unions have involved "early bird" negotiations; much more candid disclosure of a company's financial condition and its long-term planning; and joint labour/management committees at both the company and industry level. I would point out that the Ontario Ministry of Labour has been very instrumental in encouraging dialogue between the parties at the industry level in a number of key sectors. It would also appear that more direct communication with employees about the condition of a company, industry or the economy is becoming more prevalent. Provided that an employer does not seek to undermine the bargaining agent or bargain directly with employees, there is nothing improper in direct communications of this kind and, under current business conditions, the failure to do so may be irresponsible. Thus, many in management have come to recognize the need to find new ways to communicate effectively with both union leaders and rank and file workers.

The high level visibility of worker participation schemes in Canada and the United States is also significant. For a number of years Ontario has pioneered with an exploratory labour/management committee on this topic. The more co-operative approach to labour relations represented by QWL has continued to gain credibility across North America over the years and has caught the interest of many top executives and trade union leaders as a way in which to collaborate on matters of interest during both good and tough times. I therefore think it important to note, particularly in the auto field, that concessionary bargaining has resulted in a significant spreading of the QWL experimental projects that had been in place.

The trade union community is also facing a number of strategic choices which will influence its future role in the Canadian industrial relations system. Unions are having to consider the viability of quality of working life programs and other approaches to involve workers more fully in the ongoing process of the organization. Union leaders are faced with a choice of playing a role in setting the stage for, designing and administering such programs or in opposing them. However, the fact that some of these initiatives are occurring in bad times has led to a cynicism on the part of some trade unions. Similar skepticism was seen at the CLC convention in May where delegates endorsed a resolution in which each affiliate pledged not to engage in concession bargaining. The statement accompanying the resolution contained several reasons for this position. First, it was noted that unions are seldom asked to share economic decision-making with their corporate employers and governments when times are good. Only when times are really bad are they asked to become equal partners.

Second, if job security does not materialize after concessions are granted, a union may be seen by its members to have been fooled. If the concession is not granted, production may be shifted elsewhere and the union looks like a villain. Third, concessions cannot guarantee job security. Job security depends on the demand in Canadian and export markets for the products employers produce and at present these markets are depressed. Reducing wages will not, it was argued, stimulate demand and collective agreements are usually the product of hard-won previous gains.

Unfortunately, in certain quarters one does see a contradiction in the management community's commitment to collective bargaining. At one level a company may engage in a very aggressive and sophisticated strategy of union avoidance both at the corporate level and in new plants in certain industries while at the same time, in older plants, concessions, the development of labour-management co-operation, and worker participation schemes are proposed. It is difficult to

see how co-operation can be fostered at the plant level in the face of union avoidance strategy at the corporate level. Similarly, we see some labour leaders privately acknowledging the plight of Canadian industry and the need for more accommodation and moderation and yet, publicly, no concession postures and extreme militancy are adopted. And even where union and business leaders come to recognize the need for labour cost moderation and participation in key strategic issues, the level of the conflict and distress at the plant level between workers and plant management has the potential for remaining quite high and impairing co-operation at the corporate level. Nonetheless, there is more open discussion within the labour movement of the advantages and limitations of QWL initiatives and in seeking to participate in job security and financial decisions at the strategic level of the enterprise or industry.

From a more statistical viewpoint, collective bargaining has responded to reduced inflationary forces and will likely continue to do so. U.S. collective bargaining developments showed a much earlier and greater sensitivity to underlying economic conditions but the tendency for wage increases in Canada to generally outpace those in the U.S. is not a new phenomenon if wage developments in both countries are examined over the previous decade. Previously, I also pointed out that average settlement figures in the United States were seriously skewed in 1982 by the auto and trucking settlements and that present differences in inflation between the two countries can be seen, in part, as a function of certain economic approaches each country has taken such as those in response to the rapid escalation of world oil prices in recent years. In effect, the U.S. adjusted earlier than Canada to world oil prices and is now benefitting on the consumer price side because of the recent weakness in these world prices, while Canada is still in the process of adjusting to the earlier escalation in price levels. There are, of course, many other differences between the economic and political make-up of the two countries including the extent of collective bargaining; market concentration; the degree of domestic non-union and foreign competition; and current political philosophy.

In any event, wage settlements in Canada are considerably lower than six months ago as is the rate of inflation. In the first half of 1982 the CIP for the country as a whole rose at an annual rate of 11.5 per cent. Negotiated wage settlements in Ontario were running in excess of 12 per cent for agreements without COLA clauses, the best indicator of underlying settlement trends. This raised concerns that our labour costs were rising faster than those of our trading partners and consequently the competitiveness of Ontario industries was being eroded. Comparisons were drawn to the U.S., where last summer already-noticeable downward trends both in the size of settlements and in the pace of inflation were occurring. In Canada, in the second quarter of 1982, there were no signs of moderation in the wage settlements then being negotiated and few indications of a sustained reduction in the rate of inflation.

Soon thereafter the attention of governments was directed at the pay increases of the public sector. At the end of June, the Federal Minister of Finance introduced a restraint plan affecting public employees under federal jurisdiction. Subsequently, most provincial jurisdictions developed restraint policies covering compensation increases of public employees. In Ontario, legislation was introduced in September and has been in place since December. The rationale for singling out the public employees for restraint measures was that average settlements in that sector seemed to be too high vis-a-vis the private sector and were potentially less responsive to economic forces. In addition it was felt that government action would enable the private sector to follow more easily a pattern of less inflationary settlements.

With the continued economic downturn, this strategy appears to have worked although I do not, for a moment, wish to ignore the drastic and unprecedented rise in unemployment. From the third quarter of 1982 to February, 1983, base wage increases in agreements without COLA clauses dropped from 10.8% to 7.2%. In the private sector the reduction has been from 10.8% to 8.1% and in the public sector from 10.8% to 7.2%. At the same time the year-over-year increase in the C.P.I. has come down from 10.6% to 7.4%. Moreover, where there has been an upsurge in layoffs and plant closures, there has been a clear tendency for recent Canadian negotiations to focus more on job security issues and to put less emphasis on catching up or keeping up with the rate of inflation. An example is the bargaining of the Energy and Chemical Workers Union with the major oil and petrochemical companies covering 6,000 employees. In October the union publicly rejected the federal Government's 6 - 5 wage guidelines and adopted a national bargaining goal of increases exceeding the rate of inflation. In March of this year the union accepted a one-year contract at 6% with the most significant improvement being a contract clause guaranteeing employees three to six months notice in case of lay-off with additional commitments for retraining, relocation, and early retirement if lay-offs are necessary.

One of the contributions of public sector controls to stability in industrial relations has been the rapid rate at which public sector wage settlements have been reduced. As wage settlements in the private sector have declined during the autumn and early winter in response to market conditions, in normal circumstances the reaction of public sector settlements to these same forces would probably have been at best delayed.

In 1983 the collective bargaining calendar will be lighter than 1982 when the number of agreement expirations reached a record high. Economic forecasts suggest that in the immediate months ahead, bargaining will take place in an economic environment marked by a continued severe economic recession and high levels of unemployment. Given this economic climate, more moderation in the magnitude of negotiated compensation increases should be observed but the absence of recovery signs is quite depressing.

In assessing collective bargaining's role in these economic adjustments, it is important to observe that contrary to the speculation of some labour relations experts, 1982 did not see a dramatic upturn in strikes and related industrial conflict. Despite the heavy volume of bargaining which occurred in Ontario, 1982 saw significantly fewer strikes than 1981 and a marginal decline in man-days-lost. The Labour Board itself also experienced a significant decline in applications pertaining to unlawful strikes. However, I must acknowledge that the role of labour law in all of this has been remarkably subtle if not non-existent. I suppose labour laws have deterred a few companies from just picking up plants and moving them outside the ambit of collective agreement recognition clauses. The OLRB has overturned subcontracts and plant relocations where the motive was to evade collective bargaining and a trade union. There is also a considerable legal risk in seeking mid-term contract concessions under the threat of layoffs which cannot be demonstrated to be otherwise clearly unavoidable. It is also a fact that during bargaining the bargaining duty is available to trade unions to require an employer to justify a claim of economic hardship when concessions are asked for, but the OLRB has not entertained any such application to date. The Board may also be forced to amend its bargaining duty disclosure standards with respect to the planning of plant closures, subcontracts, lay-offs and technological change if the recession endures and deepens.

The Board has however refused to take the economic pressure off trade unions by characterizing a subcontract as a business disposition or sale which would carry through the



collective agreement. The same type of issue is now before the Board with respect to the status of receiverships. The Board has also refused to endorse general political activity by trade unions on company premises, although the recession and related government action has clearly increased the political sensitivity of trade unions since the decision was issued.

But probably the most significant effect of collective bargaining laws has simply been their existence and the agent role accorded trade unions. The deals worked out through trade unions in the major U.S. concessionary agreements and the more incremental responses in Canada are in marked contrast to the unilateral freezes, cuts and lay-offs experienced by non-union employees. The cost of legal proceedings and need for individual lawsuits by non-union employees has rendered the law of employment quite ineffective in these circumstances. As with controls during the 70's, non-union employees are therefore likely to have shouldered a larger economic burden than their unionized counterparts when the recession lifts. Or stated another way, unionized employers are likely to have shouldered a larger burden than their non-union counterparts.

In conclusion I suggest several tentative lessons can be drawn from our labour relations experiences to date. First, truly significant and lasting industrial relations change more often is experienced only when an industry is itself undergoing fundamental structural change. This may be the case in the context of certain survival situations where structural change has been induced and may be sustained by foreign and domestic competition or by deregulation. However, similar episodes of concessions and labour-management co-operation have occurred in the past but were abandoned as economic conditions improved and the co-operative spirit eroded. For example, the highly publicized gain sharing, human relations and modernization initiatives at Kaiser Steel Corporation, the West Coast longshoring industry and Armour Company in the United States in the 1960's have long since ceased to exist. As employment expanded in the late 1960's, the sense of crisis that brought those plans into existence evaporated. Reduced monetary demands are usually transitory unless inflation can be contained. Possibly, the employment security and quality of working life initiatives that have accompanied many of the concessions in certain U.S. contracts will be more enduring. Fortunately, experimentation by the parties in a number of these situations had developed in good times, comparatively speaking, and thus the spreading of these initiatives in tough times may result in labour-management relations being conducted on a new plateau when the economy improves. If this is the case, we will have formally entered a new phase in North American labour relations on a number of important sectors.

Second, newspaper accounts of differences between the U.S. and Canada labour relations are, I think, largely exaggerated. In each country collective bargaining is responding to the downturn and reduced inflationary pressures. However, long term contracts and their timing have had an impact in both countries in determining the response of union wages to recession as have the different economic policies each jurisdiction has pursued.

Third, new and more effective communication strategies by both labour and management have been required to facilitate more responsive and collaborative bargaining. There is, however, the question of whether greater disclosure, early negotiations, and mid-contract dialogue signal attitudinal changes sustainable after the crisis has passed. Fortunately, again, a number of industries had established labour-management committees to discuss issues and problems of interest before the onslaught of the recession, which suggests that in at least these sectors change may well be lasting.



Last but not least, the spillover effect of major adjustments has not been great. While this fact has in turn eroded pattern bargaining to some extent and led to more customizing of contracts to particular circumstances, on the whole, collective bargaining has pretty much continued as is despite unprecedented unemployment. This experience tends to confirm the literature on labour economics that unless there are imminent threats of bankruptcy or permanent plant closings—crisis situations that threaten senior workers—it is unlikely that union wage behaviour will be strongly sensitive to recessions. A similar rigidity pertains to many pricing decisions by companies in those sectors of the Canadian economy dominated by giant concerns—sectors which are rather numerous in Canada I might add.

If governments truly wish more price and wage responsiveness without the stop and go brutalizing of employers and employees, new economic techniques must be devised. The Keynesian revolution by which massive unemployment was avoided by activist fiscal and monetary policy has not been able to bring a halt to rises in prices without widespread unemployment or economic controls. It has also led to too much unilateral governmental regulation, because of the difficulty in drawing the line as to where government's intervention in the economy should end. The mistake has been the failure to recognize how crude and blunt a social instrument government intervention is. A crucial reason for the failure of macroeconomic management and the existence of excessive government regulation is the atmosphere and actions of constant confrontation among competing interests. However, experience suggests that regulation can be reduced and aggregate management tools can succeed when groups in society are able to reach minimum consensus on the trade-offs between their conflicting claims. But new mechanisms are required in Canada to promote consensus and this is the political challenge of the eighties. In other words, our problems today are not economic, they are political.

Those nations willing to experiment with consensus-seeking mechanisms—such as West Germany, Austria, and Japan—are the most successful in carrying on macroeconomic management policies. Those societies whose economic policies are forged in confrontation—including Canada, United States, Great Britain and Italy—are the most prone to stagflation and have had the least success in developing industrial policy tools. The effective consensus seeking in these more successful countries bears a central message for the globally interdependent economy of a modern democracy: national economic development requires public-private collaboration.

I therefore close on the note that business and labour in this country must be brought into national and provincial planning. They must be given a chance to look at the governments' large-scale economic models and see the likely consequences of different policy options on prices, profits and wages. Governments in turn must be confronted with the problems and issues confronting labour and management. Consensus should be sought on targets in key areas of mutual interest with government, of course, being the final arbiter. Out of this experience business and labour can project the likely consequences of pressing their ultimate wishes and demands. While complete harmony of interests is neither likely nor desirable greater understanding will inevitably ensue in all quarters. Canada can then begin to perform as the truly blessed country that it is.



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# Annual Report 1983-84

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**ONTARIO  
LABOUR RELATIONS BOARD**

**ANNUAL REPORT  
1983-84**





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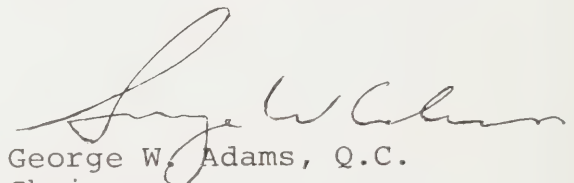
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The Honourable Russell H. Ramsay  
Minister of Labour  
400 University Avenue  
Toronto, Ontario  
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Dear Mr. Ramsay:

It is my pleasure to provide to you the fourth  
Annual Report of the Ontario Labour Relations Board for  
the period commencing April 1, 1983 to March 31, 1984.

Respectfully submitted,



George W. Adams, Q.C.  
Chairman

GWA:cfj

# I INTRODUCTION

This is the fourth issue of the Ontario Labour Relations Board Annual Report, which commenced publication in 1980-1981. This issue covers the fiscal year April 1, 1983 to March 31, 1984.

The report contains up to date information on the organizational structure and administrative developments of interest to the public and notes changes in personnel of the Board. As in previous years, this issue provides a statistical summary and analysis of the work-load carried by the Board during the fiscal year under review. Detailed statistical tables are provided on several aspects of the Board's function.

This report contains a section highlighting key decisions of the Board issued during the year. A brief description of every Board matter that was subject to review by the courts during the year is provided. Since many of these court decisions are unreported, the summaries in the Board's Annual Report have been well received, particularly by the practising bar. The report continues to provide a legislative history of the *Labour Relations Act* and notes the amendments to the Act that were passed during the fiscal year.

## II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of public hearing before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

"... the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board, (1978), 1 Advocate's Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today – management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers – something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when the dispute arises in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944). In his book, *The Ontario Labour Court 1943-44*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise:-

"... the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."



The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a wartime move by the Federal Government to centralize labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over “property and civil rights.” (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5)

The Act was subsequently narrowed so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, “opt in” to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations “in the same form and to the same effect as that . . . Act which may be passed by the Parliament of Canada at the session currently in progress . . .” This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board’s role was fairly limited. There was no enforcement mechanism at the Board’s disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lockout unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary to the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board’s power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the Board’s acquisition of the power to grant a trade union “successor” status. (*The Labour Relations*

*Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of “successor employers” was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

*The Labour Relations Amendment Act, 1960*, S.O. 1960, c. 54, made a number of changes in the Board’s role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board’s reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board’s reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to “carve out” a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the “Goldenberg Report” (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the “Franks Report” (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario*, May, 1976). (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31). Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, The Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created “duty of fair representation.” This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make “cease and desist” orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and be enforceable as orders of the Court.

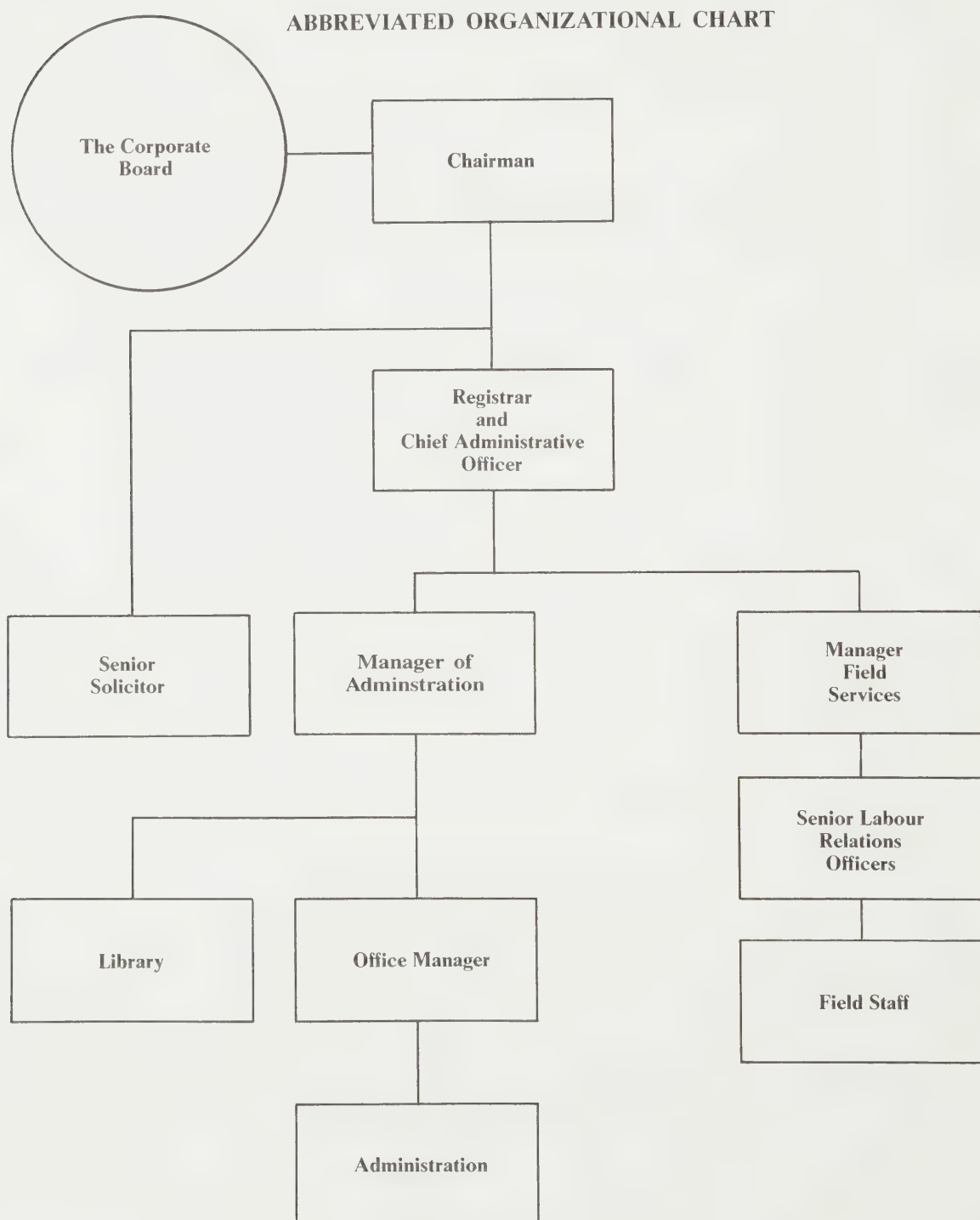
A major increase in the Board's remedial powers under the *Labour Relations Act* occurred in 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, *The Labour Relations Amendment Act, 1980* (No. 2), S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer.

During the year under review, the *Labour Relations Amendment Act 1983*, S.O. 1983, c. 42 was enacted. This Act, which received Royal Assent on June 21, 1983, inserted section 71a into the Act, prohibiting strike related misconduct and the engaging of or acting as, a professional strike-breaker.

### III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:





## IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act* as follows:

“... it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chairman and an Alternate Chairman, several Vice-Chairmen and a number of Members representative of labour and management respectively in equal numbers. These appointments are made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the *Labour Relations Act*, R.S.O. 1980, c. 228, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not subject to appeal and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report from time to time.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 464. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. During the year under review the Board was required on several occasions to determine the impact of the *Canadian Charter of Rights and Freedoms* and the *Inflation Restraint Act* on the rights of parties under the *Labour Relations Act* and the *Hospital Labour Disputes Arbitration Act*.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Office of the Solicitor.

### **(a) ADMINISTRATIVE DIVISION**

The Registrar and Chief Administrative Officer is the senior administrative official of the Board. He is responsible for supervising the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings, the holding of votes or particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, constraints on its access to public funds, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload within the resources allocated to it, underpins much of its contribution to labour relations harmony in this province.

The Manager of Administration and the Manager of Field Services report directly to the Registrar and Chief Administrative Officer. The former manages the day-to-day administrative operation and the latter the field services. An Administrative Committee comprised of the Chairman, Alternate Chairman, Registrar and Chief Administrative Officer, Manager of Administration, Manager Field Services, Senior Solicitor and Officer Manager meets regularly to discuss all aspects of Board administration and management.

The administrative division of the Board includes: office management, case monitoring, and library services.

#### **1. Office Management**

An administrative support staff of approximately 60 people, headed by an Office Manager who reports to the Manager of Administration, and a Senior Clerical Supervisor processes all the applications received by the Board.

Four primary sections deal with applications:

- (1) The certification section handles all applications for certification, termination and accreditation.
- (2) The sundry section processes all other applications including unfair labour practice complaints, grievances in the construction industry and illegal strike and lock-out proceedings.
- (3) The vote section deals with all representation votes.
- (4) The clerks section reviews evidence in support of, or opposition to, trade unions filed with the Board in certification and termination applications and

prepares the material necessary for the Board to conduct hearings and when necessary, attends hearings to assist the Board.

The bulk of the Board's caseload is made up of applications for certification, unfair labour practice complaints and referrals to arbitration of construction industry grievances.

The Registrar's office is responsible for setting hearing dates for all cases and maintaining an up-to-date availability roster of all Vice-Chairmen and Board Members for scheduling purposes.

## **2. Case Monitoring**

A computerized case monitoring system was introduced during 1982-83. Data on each case is coded on a day-to-day basis as the status changes. Reports are then issued on a weekly and monthly basis on the progress of each proceeding from the filing of applications or complaints to their final disposition.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can lead to increased productivity and better service to the community.

## **3. Library Services**

The Ontario Labour Relations Board Library employs a staff of 3, including a full time professional librarian. The Library Staff provides research services for the Board and assists other library users.

The Board Library maintains a collection of approximately 1000 texts, 100 journals and 25 case reports in the areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The library has approximately 4000 volumes. The collection includes decisions from other jurisdictions, such as the Canada Labour Relations Board, the U.S. National Labour Relations Board and provincial labour boards from across Canada.

The Library Staff maintains a computer index to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, Statutes considered, cases cited, date etc. The system also provides a microfiche index to the decisions. It permits Board members and staff prompt and accurate access to previous Board decisions dealing with particular issues under consideration. The Board is the first labour relations tribunal in Canada to develop and implement this type of system. It has been reviewed by officials from a number of labour relations boards and may be used as a model in the development of other computerized retrieval systems.

Several changes have taken place in the library. A new Board Librarian, Clare Lyons, was appointed effective November 1, 1983. The Library has also expanded and now occupies approximately 1300 square feet.



**(b) FIELD SERVICES**

In view of the Board's firm belief that the interests of the parties appearing before it, and labour relations generally in the province, are best served by settlement of disputes by the parties without a need for a formal hearing and adjudication, increasing emphasis is placed on the role of the field officers in assisting parties to resolve their disputes. In order to respond to a caseload, which is increasing in both volume and complexity, the Board's field services division was re-organized in the fiscal year 1982-83. Under this structure, the Manager of Field Services, is responsible for the overall functioning of the division with particular emphasis upon the setting and monitoring of performance standards, case assignments, staff development and maintaining liaison with the Board. The Manager of Field Services is assisted by three Senior Labour Relations Officers, each of whom is assigned a team of officers. The Senior Labour Relations Officers, in addition to handling their usual caseload in the field, are responsible for providing guidance and advice in the handling of individual cases, managing the Board's certification day settlement efforts on a rotating basis, and assisting with the performance appraisals of the Board's labour relations officers.

The field staff, during the year under review, consisted of the Manager, three Senior Labour Relations Officers, seventeen Labour Relations Officers and two Returning/Waiver Officers. The Board's Returning/Waiver Officers conduct representation votes directed in Board proceedings and carry out the Board's waiver program in relation to certification applications. In addition, these officers undertake the conduct of final offer votes directed by the Minister of Labour. In fiscal year 1983-84, under the new structure, the field staff continued its excellent performance. The settlement rate for the year was approximately 85 percent in all matters. With this performance, the field services division made a significant contribution towards the Board's excellent overall performance in fiscal year 1983-84.

The Alternate Chairman of the Board supervises field activities, and, along with the Manager, Field Services and the Board Solicitors, meets with the officers on a monthly basis to review recent developments in Board jurisprudence affecting officer activity and the performance of the field services program.

**(c) OFFICE OF THE SOLICITOR**

The Office of the Solicitor, under the direction of the Senior Solicitor of the Board, reports directly to the Chairman. A solicitor assists the Senior Solicitor in carrying out the functions of this office. In addition, each year the Board employs several articling law students to assist in the solicitor's work.

The Office of the Solicitor is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chairman, Vice-Chairman and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Office of the Solicitor is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the Office of the Solicitor. When preparation or revision of practice notes, Board Rules or forms become necessary, the Office of the Solicitor is responsible for undertaking those tasks.



The Senior Solicitor is active in the staff development programme of the Board and the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, the solicitors prepare written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The Senior Solicitor also advises the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Office of the Solicitor is the representation of the Board's interest in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, the Senior Solicitor in consultation with the Chairman, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Office of the Solicitor is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

During the year under review, the Courts dealt with sixteen applications for judicial review. Of these all but one were dismissed. In the application that was granted leave to appeal was granted and a decision from the Court of Appeal is pending, the hearing having been completed. In another case in which an application for judicial review was successful during the last fiscal year, leave to appeal was obtained and on appeal the Court of Appeal reversed the decision of the Divisional Court. Of three applications for leave to appeal to the Court of Appeal made during the fiscal year, two were granted and one dismissed. In one case, an application for prohibition under section 6(2) of the *Judicial Review Procedure Act* was refused and in another a motion for a direction that the Board produce a copy of a draft decision for inclusion in the record in a matter of which was the subject of an application for judicial review, was dismissed.

During the fiscal year four applications to stay Board proceedings were made and all four applications were dismissed.

The Office of the Solicitor maintains an information service through which any person may obtain, by telephone, general information relating to the *Labour Relations Act*, the Regulations, procedures and practices of the Board, and other related legislation. It is also possible for a member of the public to obtain such information at a personal interview with a member of the Board's legal staff. The solicitors also receive and respond to written inquiries coming from the public. In addition to the two pamphlets entitled "Certification by the Ontario Labour Relations Board" and "Rights of Employees, Employers and Trade Unions", the Board recently issued a pamphlet entitled "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board." In September of 1982, the Board commenced a publication entitled "Monthly Highlights". This publication contains summaries of significant decisions of the Board during the month and other notices and administrative developments of interest to the labour relations community. The Board strives to issue the Monthly Highlights as quickly as possible after the end of each month and already it has been well received by the community. The Board recently revised the Construction Industry Map of Ontario, depicting the geographic areas used by the Board in construction industry certification cases. The Office of the Solicitor is responsible for producing the Board's Annual Report and for periodically revising the publication entitled "A Guide to the Labour Relations Act", which is an explanation in layman's terms of the significant provisions of the Act. As part

of the information providing function, from time to time the Board's solicitors accept invitations from employer trade union or employee groups or from groups of students to speak on Board practice and procedure.

Nine formal complaints relating to the Board were disposed of by the Ombudsman. In four of these, after conducting an investigation, the complaints were found by the Ombudsman to be unsupportable. In three complaints, the files were closed, the Board being notified that the Board's explanation in response to the complaint was satisfactory and one complaint was withdrawn by the complainant. In one case the complaint was found to be supportable. However, the Ombudsman did not make any recommendations in view of the fact that the Board had granted the complainant leave to re-open his hearing before the Board.

The Office of the Solicitor is also responsible for the publication of the Ontario Labour Relations Board Report, a monthly series of selected Board decisions which commenced in 1944. The Solicitor is Editor of this publication, which is one of the oldest and most prestigious labour board reports in North America. The Board has computerized its subscription list to ensure maximum efficiency in dealing with the subscribers to the Report and uses its existing word processing equipment to provide the typesetter of the Monthly Report with machine readable manuscript, thus reducing both the cost and time of its publication.

## MEMBERS OF THE BOARD

In the year under review, the Board consisted of the following persons:

GEORGE W. ADAMS, Q.C. *Chairman*

Appointed Chairman of the Ontario Labour Relations Board effective September 1, 1979, Mr. Adams holds degrees of B.A. (McM) 1967, LL.B. (Osgoode, with honours) 1970, and LL.M. (Harvard 1971). His professional background includes: law professor at Osgoode Hall Law School, 1971-78; Vice-Chairman Ontario Labour Relations Board, 1974-75; Assistant Deputy Minister of Labour, Province of Ontario, 1975-77; Vice-Chairman, Ontario Education Relations Commission, 1977-79; Chairman, Ontario Grievance Settlement Board 1977-79; and private practitioner with a Toronto law firm, 1978-79. Mr. Adams is the author of numerous books, monographs and articles, the majority of them relating to labour law. He is an experienced arbitrator, mediator and fact-finder. He is a member of the National Academy of Arbitrators and the Law Society of Upper Canada.

KEVIN M. BURKETT *Alternate Chairman*

Mr. Burkett has served as the Board's Alternate Chairman since September of 1979. He was first appointed as a Vice-Chairman of the Board in November of 1975. Mr. Burkett, who holds B.A. and M.B.A. degrees from the University of Toronto, has had much varied experience in industry, trade unions and government prior to joining the Board. Having served as the Research Director/Negotiator of the Civil Service Association of Ontario (predecessor of the Ontario Public Service Employees Union), from 1968 to 1970, he joined the Ontario Ministry of Labour in 1970 as a conciliation officer and was appointed as a mediator in 1972. In 1973 he joined Ontario Hydro as Senior Industrial Labour Relations Officer, a post he held until his appointment to the Board. Mr. Burkett is an experienced arbitrator, mediator and fact-finder, both in the private and public sectors. Mr. Burkett served as the Chairman of the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mining Plants in Ontario, whose report was submitted to the respective Ministers of Labour in May 1981.

GAIL G. BRENT *Vice-Chairman*

A part-time Vice-Chairman since 1977, Mrs. Brent graduated in 1965 with a B.A. from the University of Toronto and with a LL.B. from Queen's University in 1968; she was called to the Bar in 1975. Mrs. Brent taught law at Queen's University from 1970 to 1974, and at the University of Western Ontario from 1974 to 1977. She was appointed to the permanent list of approved arbitrators of the Labour-Management Arbitration Commission in 1974, and since 1977 has been an active arbitrator and adjudicator. She has been an arbitrator with the Ontario Police Arbitration Commission since 1974. In 1980 Mrs. Brent was appointed as a Commissioner of both the Education Relations Commission and the Colleges Relations Commission.

R.M. (RICK) BROWN *Vice-Chairman*

Rick Brown came to the Board in 1983 from the Faculty of Law at the University of Victoria where he had taught since 1977 after completing graduate work at Harvard University. He is a part-time member of the Public Service Staff Relations Board and a sometime arbitrator. On the academic front, he has published several articles on labour relations law, is a co-editor of a case book on Canadian employment law and is the labour law editor of the Supreme Court Law Review.



E. NORRIS DAVIS      *Vice-Chairman*

Mr. Davis, who holds the degree of LL.B. (Sask.) 1938, was first appointed to the Board as an employer representative in 1948. From 1952 to 1953 he served as the Chairman of the Board. In 1953 Mr. Davis left the Board and during the next 15 years had several positions in corporate personnel and industrial relations, including a number of years as President of Carling O'Keefe Breweries of Canada Limited. Mr. Davis returned to the Board as a part-time Vice-Chairman in 1977 and served in that capacity until his recent retirement.

RORY F. EGAN      *Vice-Chairman*

Mr. Egan completed his undergraduate work at St. Michael's College, University of Toronto in 1938. After the intervening world war, Mr. Egan earned a law degree from the same university in 1945. Called to the Bar in the same year, he engaged in the practice of law, and served for one year as Assistant Crown Attorney in St. Thomas, Ontario. In 1954 he joined A.V. Roe as Legal Assistant to the Vice-President of Industrial Relations. Mr. Egan returned to private practice with a law firm specializing in labour relations law in 1959. In 1963 he left his law practice to devote his time to chairing boards of conciliation and arbitration. Mr. Egan was appointed a Vice-Chairman to the Ontario Labour Relations Board in 1966 and in 1974 was designated Alternate Chairman. He was appointed Chairman of the Ontario Police Arbitration Commission in 1976. Mr. Egan retired from his full time position at the Board in 1979 but continued to serve as a part-time vice-chairman until his recent retirement.

D.E. (DON) FRANKS      *Vice-Chairman*

Mr. Franks is a graduate of McMaster University (B.A. 1960) and Osgoode Hall Law School (LL.B. 1967). Joining the Board in 1969, he served as its Solicitor. In 1972 Mr. Franks was appointed a Vice-Chairman of the Board. He occupied this position until 1975 when he was appointed Vice-Chairman of the Construction Industry Review Panel, which position he held until May, 1980. Mr. Franks also served, during 1975-76, as the Commissioner on the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario. The report prepared by him led to the amendment of *The Labour Relations Act* in 1977 which provided for province-wide bargaining in the construction industry. Mr. Franks was also involved in the implementation and monitoring of the province-wide bargaining scheme. In 1978 he was appointed chairman of a conciliation board by the government of Saskatchewan, which resolved a two-month province-wide strike by the Labourers' Union. Mr. Franks returned to the Labour Relations Board as a Vice-Chairman in May of 1980. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

R.A. (RON) FURNESS      *Vice-Chairman*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his LL.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chairman in 1969.



OWEN V. GRAY      *Vice-Chairman*

Mr. Gray joined the Board as a Vice-Chairman in October, 1983. He is a graduate of Queen's University, Kingston, (B.Sc. Hons, 1971) and the University of Toronto, (LL.B. 1974). After his call to the Ontario Bar in 1976, Mr. Gray practised law with a Toronto law firm until his appointment to the Board.

ROBERT D. HOWE      *Vice-Chairman*

Mr. Howe was appointed to the Board as a part-time Vice-Chairman in February, 1980 and became a full-time Vice-Chairman effective June 1, 1981. He graduated with a LL.B. (gold-medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 he was a law professor at the Faculty of Law, University of Windsor. From 1977 until his appointment to the Board, he practised law as an associate of a Windsor law firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator.

RICHARD (RICK) MacDOWELL      *Vice-Chairman*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), a M.Sc. (with Distinction) in Economics from the London School of Economics & Political Science (1970) and a LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chairman in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit.

MORT. G. MITCHNICK      *Vice-Chairman*

Mr. Mitchnick was appointed as Vice-Chairman of the Board in November, 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his LL.B. at the University of Toronto Law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board.

CORINNE F. MURRAY      *Vice-Chairman*

Mrs. Murray joined the Board as a Vice-Chairman in August 1982. Prior to her appointment, she practised labour law with a Toronto law firm for six years. During this period, Mrs. Murray had acted as lecturer on the subject of labour law for numerous management groups. Having graduated from Dalhousie Law School, Halifax, Nova Scotia, she was subsequently called to the Bar in British Columbia and Ontario.

MICHEL G. PICHER      *Vice-Chairman*

Mr. Picher holds the degrees of A.B. (Colby College, Maine 1967), LL.B. (Queen's University, 1972) and LL.M. (Harvard, 1974). He was appointed a Vice-Chairman of the Board in 1976. Prior

to his appointment. Mr. Picher taught law as Assistant Professor in the Faculty of Law at the University of Ottawa from 1974 to 1976. He is an experienced arbitrator, mediator and fact-finder. During the year under review, Mr. Picher left the Board and is presently engaged in full-time private practice as an arbitrator and mediator.

**PAMELA C. PICHER**      *Vice-Chairman*

Mrs. Picher was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1976. She is a graduate of Colby College, Maine (A.B., 1967) and Queen's University (LL.B., 1973). She is presently working towards a LL.M. degree from Harvard university, the required thesis having been completed. Prior to joining the Board, Mrs. Picher was an Assistant Professor at the University of Ottawa Law School. In 1975 she was commissioned by the Law Reform Commission of Canada to write a paper for the Administrative Law Section, which she presented in July, 1976. Mrs. Picher has several other legal publications to her credit and is an experienced arbitrator and fact-finder. In June of 1981, Mrs. Picher moved from full-time to part-time status.

**NORMAN B. SATTERFIELD**      *Vice-Chairman*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chairman. Mr Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He has been involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years. Mr. Satterfield is a past Director of the Construction Labour Relations Association of Ontario and a past Member of the National Relations Committee of the Canadian Manufacturers' Association.

**IAN C.A. SPRINGATE**      *Vice-Chairman*

Mr. Springate has been a Vice-Chairman of the Board since May of 1976. He has degrees of B.A. with distinction, (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chairman. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator, and was recently appointed Chairman of the Crown Employees Grievance Settlement Board.

## **Members Representative of Labour and Management**

**BROMLEY L. ARMSTRONG**

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in March of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board. Mr. Armstrong

was recently honoured by the Government of Jamaica when he was appointed a Member of the Order of Distinction in the rank of officer, in the 1983 Independence Day Civil Honours List.

#### CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

#### JOHN D. BELL

Mr. Bell has been a full-time Member of the Board representing management since 1970. He was employed for 33 years at Massey-Ferguson Limited in various personnel and industrial relations capacities prior to his appointment to the Board. The last position he held at the Company was Director of Personnel and Industrial Relations, Industrial and Construction Machinery Division. Mr. Bell retired as a full-time Board Member in August, 1982 and was subsequently re-appointed as part-time Board Member.

#### DONALD H. BLAIR

Mr. Blair was appointed as a part-time member of the Board representing management in March, 1983. Mr. Blair retired from Dominion stores after 31 years of service, the last 15 years as Director of Labour Relations. In May of 1983, Mr. Blair established a firm specializing in providing industrial relations consulting services. He has been a member of the Personnel Association of Toronto since 1960 and was a Director of the same during 1965-67. He was also Vice-Chairman of the Board of Directors of the Central Ontario Industrial Relations Institute from 1979 to 1983.

#### C. GORDON BOURNE

Mr. Bourne has been a part-time Member of the Board representing management since April of 1977. Between 1945 and 1977, he was employed by Molson's Brewery (in Quebec and in Ontario) in various personnel and industrial relations capacities. Among the offices Mr. Bourne held prior to his appointment to the Board include: Director of the Montreal Personnel Association (1952-54); Director (1962-67) and President (1966-67) of the Personnel Association of Toronto; Member of the Canadian Manufacturers' Association Ontario Labour Relations Committee (1963-77); and Member of the Ontario Brewers' Industrial Relations Committee (1955-77).

#### E. JIM BRADY

Mr. Brady was appointed a part-time Member of the Board representing management in November, 1979. He was employed in various capacities in personnel and industrial relations for 34 years prior to his appointment. He spent the majority of this time at Kimberley-Clark of Canada Limited, where he became Director of Industrial Relations in 1972. In 1975, Mr. Brady was appointed Vice-President of Industrial Relations of the Abitibi-Price Inc. Group.



## FRANK C. BURNET

On December, 1983, Mr. Burnet was appointed a part-time Board Member representing management. After graduating from the University of Saskatchewan (B.A. Economics, 1940) Mr. Burnet was engaged in personnel capacities in several corporations in Ontario and Quebec. In 1970 he joined Inco Ltd., as its Director of Industrial Relations responsible for all Canadian Operations. From 1972 until his retirement in 1982, Mr. Burnet held the position of Vice-President Employee Relations, responsible for employee relations activities in Canada, U.S., U.K., and other foreign operations. The many offices Mr. Burnet has held include: Chairman, National Industrial Relations Committee of the Canadian Manufacturers' Association, 1978-81; Governor and Member of the Executive Committee of the Canadian Centre for Occupational Health and Safety, 1982-83; Member of OECD Joint Labour-Management team studying technological change in the U.S. (1963) and incomes policy in the U.K. and Sweden, (1965).

## LEONARD C. COLLINS

Mr. Collins was appointed a part-time Member of the Board representing labour in November, 1982. Prior to joining the Board Mr. Collins had been very active in the trade union movement in Ontario. From 1945 to 1960 he held various positions with Local 232 of the United Rubber Workers, including the positions of Vice-President from 1950 to 1954 and President from 1954 to 1960. Since 1960 he has been an International Field Representative for the United Rubber Workers and since 1971 has from time to time served as acting Director of District 6. Mr. Collins is very experienced in labour board and arbitration board proceedings.

## F. STEWART COOKE

In October, 1981, Mr. Cooke was appointed as a full-time Board Member representing labour. Having served in the Army in the early 1940's, Mr. Cooke studied Economics and Law at Victoria College for two years. Mr. Cooke's career with the United Steelworkers of America commenced in 1948 when he joined its staff. In 1949, he was elected secretary of the Hamilton Labour Council of the Canadian Congress of Labour. In 1953, Mr. Cooke was appointed Supervisor for the Hamilton area, a position he held until March, 1971. In 1956, he was elected Secretary of the merged Hamilton and District Labour Council of the Canadian Labour Congress. In 1962 Mr. Cooke was elected Vice-President of the Hamilton and District Labour Council. In March of 1971 Mr. Cooke was appointed District Representative of the Steelworkers District 6. Subsequently, Mr. Cooke held several key positions with the Steelworkers, including International Representative, before being elected Director of District 6 in 1977, a position he held until September, 1981. From 1972 to 1977 he was a Vice-President of the Ontario Federation of Labour. Mr. Cooke has served on the executive boards of numerous public, social and charitable organizations and has held several positions on the executive of the New Democratic Party of Canada including the position of Vice-President, from 1967 – 1980. He has represented the Canadian Labour movement at many conferences, including the Iron and Steel Committee of the International Labour Organization, in Switzerland, 1969, and the International Metalworkers Federation Iron and Steel Conference in Belgium, 1969. Mr. Cooke has also been on delegation to the U.S.S.R., Japan, Sweden, Norway, Finland, France, and Holland.

## W. GORDON DONNELLY

Mr. Donnelly was appointed a part-time Board Member representing management in 1979. Having obtained a B.A. (1939) and B.C.L. (1947) from McGill University of Montreal, he practised law



in the Province of Quebec. In 1947 he joined the Aluminum Company of Canada Limited, where he progressed from Industrial Relations Supervisor, Shawinigan Works, to Vice-President Personnel and Industrial Relations, Alcan Products Limited, Toronto, Ontario 1970.

#### MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. A graduate of the University of British Columbia. Mr Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he had held include: Director of Labour Relations of the Ontario Federation of Construction Associations, 1970; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel, 1972; Director of Industrial Relations, Kaiser Canada, 1974; Manager of Industrial Relations of the SNC Group, 1975; and Executive Director of the Construction Employers Co-ordinating Council of Ontario, 1979. Mr. Eayrs is also a past Chairman of the National Labour Relations Committee of the Canadian Construction Association.

#### WILLIAM GIBSON

Mr. Gibson was appointed a part-time Board Member representing management in 1978. He has been employed by Robert McAlpine Limited since 1954 and is Vice President of that company with a portfolio that includes the responsibility for labour relations for the Company's operations throughout Canada. Mr. Gibson has been very active in the field of labour relations involving contractors and has held several key positions in various construction contractors' associations.

#### ANDREW GRANT

Mr. Grant was appointed a part-time Board Member representing management in April, 1983. After a period of employment at Gulf Canada, Mr. Grant joined B.P. Canada in 1960. At the time of his appointment to the Board, he was Manager, Lubricants Production. Mr. Grant has held offices in various committees including the National Board of Directors of the Packaging Association of Canada; Chairman, Industry Committee on Metric Conversion and Corporate Representative and Chairman of the Joint Canadian/U.S. Technical Committee of the Packaging Institute, U.S.A.

#### PAT V. GRASSO

Appointed a part-time member of the Board representing labour in December, 1982, Mr. Grasso has been active in the labour movement in Ontario for many years. Having held various offices in District 50 of the United Mine Workers of America, he was appointed Staff Representative in 1958, and Assistant to the Regional Director for Ontario in 1965. In 1969, Mr. Grasso became the Regional Director for Ontario and was elected to the International Executive Board. When District 50 merged with the United Steelworkers of America in 1972, he became Staff Representative of the Steelworkers in charge of organizing in the Toronto area. In January 1982, Mr. Grasso was transferred to the District 6 office of the Steelworkers and appointed District Representative in charge of co-ordinating, organizing and special projects.

#### ANNE S. GRIBBEN

Ms. Gribben, a registered nurse by profession, obtained a B.A from the University of Toronto in 1968, in addition to her nursing qualification. Her nursing career at the Toronto Western Hospital

included 13 years served in a supervisory capacity. She has served on various committees of both the Canadian Nurses' Association and the Registered Nurses' Association since 1950. An Executive Officer of the former District No. 5, Registered Nurses' Association of Ontario from 1960, during 1964-65 she was involved in its re-organization into the present-day Metro Toronto Chapter. Ms. Gribben joined the Employment Relations Department of the Registered Nurses' Association of Ontario in 1965, and became its Director in 1968. Ms. Gribben relinquished that post in 1974 to become the Chief Executive Officer of the Ontario Nurses' Association. She was appointed a part-time Board Member representing labour in 1975 – the first woman to be appointed as a Board Member of the Ontario Labour Relations Board.

#### LLOYD HEMSWORTH

Mr. Hemsworth has served as a part-time Member of the Board representing management since August of 1975. Having obtained a B.A. degree (1939) from the University of Western Ontario, he returned to complete a management training course at that university in 1954. Mr. Hemsworth was also a part-time Member of the Public Service Staff Relations Board. Mr. Hemsworth held several key positions in the personnel and industrial relations departments at Canadian Industries Limited, Kimberley-Clark of Canada and de Havilland Aircraft. Mr. Hemsworth has presented lectures and papers at numerous universities and seminars. He has been an active participant in the Duke of Edinburgh Commonwealth Study Conferences held in 1956, 1962 and 1980 and served as Executive Director of the most recent conference.

#### ALBERT HERSHKOVITZ

Mr. Hershkovitz has served as a part-time Board Member representing labour since 1976. He has been the Business Agent of the Fur, Leather, Shoe and Allied Workers' Union, Locals 82 and 62, since 1956, and a Vice-President of the Ontario Federation of Labour since 1974. In 1977 he became the President of the Ontario Provincial Council, United Food & Commercial Workers' International Union. In addition to holding these offices, Mr. Hershkovitz has been a Member of the Board of Referees of the Unemployment Insurance Commission since 1960 and for many years has acted as a union nominee on boards of arbitration.

#### ROBERT D. JOYCE

Mr. Joyce has been a part-time Member of the Board representing management since September, 1977. He joined Canada Packers Limited in 1974 and became its Corporate Relations Manager in 1965. He was also elected to the Company's Board of Directors that year. During his career at Canada Packers, Mr. Joyce was actively involved in negotiation, conciliation and arbitration proceedings and also served on many boards of arbitrations as employer nominee. Mr. Joyce has been called upon to serve on commissions and task forces appointed by governments on several occasions. As a member of the Canadian Manufacturers Association Industrial Relations Committee, Mr. Joyce has conducted many industrial relations seminars. He has also provided an employee relations consultation service for management for several years.

#### JOSEPH KENNEDY

In May, 1983, Mr. Kennedy was appointed a part-time Board Member representing labour. He has been a member of Local 793 of the International Union of Operating Engineers for over 30 years and has held various offices in that Local. At present he holds the position of Business Manager of Local 793.

## HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario, 1958-62; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and Member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

## BRUCE K. LEE

Mr. Lee has served as a part-time Board Member representing labour for the past three years. He was President of the UAW Amalgamated Local 252, Toronto, for 19 years. During that time, he served on various Union committees and delegations, both in Canada and the United States. In 1964, Mr. Lee was appointed to the UAW organizing staff.

## JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics as well as a M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies before becoming Vice-President of International Labatt Brewing Co. in 1979. He held this position until his retirement in January of 1982.

## F. WILLIAM MURRAY

Mr. Murray was a part-time Member of the Board representing management from 1965 to February of 1980, when he assumed a full-time position on the Board. From 1948 to 1963, Mr. Murray was employed as the Manager of the Motor Transport Industrial Relations Bureau, which served as the labour relations representative for groups of companies in Ontario and Quebec. In 1963 he formed his own industrial relations consulting firm and was active in industrial relations consulting work for many trucking firms and related industries. Since 1971 Mr. Murray has been a Member of the Public Service Staff Relations Board. He is also a Member of the Board of Trade Industrial Relations Committee and the Personnel Association of Toronto.

## PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britain and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of C.U.P.E. and presently holds the office of Ontario Regional Director of C.U.P.E., and Vice-President of the Ontario Federation of Labour.



## ROBERT W. REDFORD

Mr. Redford has been a part-time Member of the Board representing management for the last four years. Having graduated from Queen's University with a degree of B.A. (Economics) in 1963, he joined Canada Packers Inc., where he worked for 16 years in the employment relations function. His final position at Canada Packers was Corporate Manager, Personnel Services. Mr. Redford is currently the Executive Directive of the Personnel Association of Toronto and the Personnel Association of Ontario.

## JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and a LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

## MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

## WILLIAM F. RUTHERFORD

Mr. Rutherford has been a full-time Member of the Board representing labour for three years. He was the Houdaille Plant Chairman for the UAW for 37 years. He was a Member of the Oshawa District Labour Council between 1944 and 1977 and a Member of the Canadian UAW Council during 1948 and 1971. Mr. Rutherford has served on the Board of Referees of the Unemployment Insurance Commission for 12 years.

## INGE M. STAMP

Appointed a full-time Board Member representing management in August, 1982, Ms. Stamp comes to the Board with many years of experience in the personnel and labour relations field at Bechtel Canada Limited. Having joined that firm as Senior Secretary to the Vice-President of Labour Relations in 1969, Ms. Stamp became Administrative Assistant in 1974 and Labour Relations Assistant in 1975. In 1977 she was appointed labour relations representative, a post she held prior to her appointment to the Board. In this capacity, Ms. Stamp was appointed, by the Industrial Contractors Association of Canada, as a member of several employer bargaining agencies designated to negotiate collective agreements on behalf of management. Ms. Stamp has been very active in the functions of the Industrial Contractors Association of Canada and since 1979 has served as treasurer responsible for the General Funds and the Ontario Industry Funds. She has represented Bechtel Canada Limited at negotiations of the Boilermaker Contractors Association and annual conferences of the Canadian Construction Association.



## ROBERT J. SWENOR

Mr. Swenor was appointed as a part-time Board Member in February, 1982, to represent management. Mr. Swenor, who holds the degrees of B.A. and M.B.A. from McMaster University and a certificate in Metallurgy of Iron and Steel, has been employed with Dominion Foundries and Steel Ltd., Hamilton, since 1970 and is presently its Assistant Secretary. He is Vice-Chairman of the Canadian Manufacturers' Association Legal Advisory Committee on Environmental Law and also serves on the Legislation Committee, the Sub-Committee on Corporation Law and the Environment Quality Committee of that organization.

## E.G. (TED) THEOBALD

Mr. Theobald was appointed as a part-time Board Member representing labour in December, 1982. From 1976 to June, 1982, he was an elected member of the Board of Directors of O.P.S.E.U., and during this period served a term as Vice-President. Active in the trade union movement since 1971, Mr. Theobald has served as President and Chief Steward of a 600 member local union. He has served on numerous union committees and has either drafted or directly contributed to several labour relations related reports. He is experienced in the grievance procedure and arbitration. At present, Mr. Theobald is employed by George Brown College, as a teaching master in the Mechanical Design and Construction Department.

## W.H. (BILL) WIGHTMAN

Mr. Wightman was first appointed to the Board 1968, becoming a full-time member in 1977, and resigning from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canadian Manpower and Immigration Council, the Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He was a founding member of the McMaster Medical Centre Advisory Council on Occupational Health and Safety. His writing credits include papers presented at the World Employment Conference in Geneva and symposia at Vienna and Panama City. He is a graduate of Clarkson College (BBA'50) and Columbia University (MS'54) where he lectured while engaged in doctoral studies.

## JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. He has been the Labour Relations Consultant to the Electrical Contractors Association of Ontario for the last 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association of Ontario, Charter Member of the Canadian Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

**NORMAN A. WILSON**

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of the Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

## V HIGHLIGHTS OF BOARD DECISIONS

### **No adjournment because advisor on vacation**

In this application for certification, the Board considered a request by the employer for an adjournment of the certification hearing. The owner of the employer company left for a golf tournament in Florida one week after he had been formally advised of the date set for the hearing. The owner was not expected to give evidence, but counsel for the employer stated that the owner was counsel's sole advisor.

The Board reviewed the jurisprudence on the subject of adjournment before the Board, including *Nick Masney Hotels Limited*, [1967] OLRB Rep. Nov. 833, 834-835, affirmed [1970] 3 O.R. 461, 465-466 (C.A.); *Montgomery Elevator Company Limited*, [1978] OLRB Rep. Jan. 83; and *Re Flamboro Downs Holdings Ltd.* (1979), 99 D.L.R. (3d) 165, 168-169 (Ont. D.C.). The Board noted that its practice is to grant adjournments only on consent of the parties or where the request is based on circumstances which are completely out of the control of the party making the request and where to proceed would seriously prejudice such party. Expedition of the certification process is essential. As long as the party has adequate notice of the hearing, an adjournment will not be granted merely for the convenience of the party or its representative. On the facts of the case under consideration, the request for adjournment was refused.

As a result, the Board went on to hear and consider evidence from two employees who claimed they were threatened by a union official into joining the trade union. The Board noted that the trade union did not file membership evidence in respect of these two employees, but decided to consider their allegations because such trade union activities, if proven, could taint the reliability of other membership cards.

On the basis of credibility, the Board concluded that no improper threats were made by trade union officials. The trade union's membership evidence which exceeded 55% of the employees in the bargaining unit, was therefore considered reliable. A certificate was issued to the union. *Don's Sportswear*, [1983] OLRB Rep. Apr. 516.

### **No non-union option on ballot where each competing union having support in excess of 55%**

Two trade unions sought certification in respect to the same bargaining unit. Both unions filed membership evidence showing the support of more than 55% of the employees in the unit, with some overlap of membership between the two unions.

The Board was required to consider whether the vote it would order among the bargaining unit employees should permit a choice between the two unions only, or a choice between the two unions and a no union choice as well. The Board reviewed the relevant jurisprudence. It noted that employees will normally only be given a choice between the two applying unions, where as in this case, a non-displacement application for certification is made, there is no request for a pre-hearing vote, and both unions have membership support in excess of 55%. Where, however, objecting employees establish a numerically relevant and voluntary petition, the Board will normally include a no union option in the representation vote since the employees would have been presented with that option if the union's application had been processed on its own. Other factors, too, may



require the vote to include a no union option, such as charges against union membership evidence. There have been cases, the Board noted, where the no union option was included on the ballot, but these involved pre-hearing votes, or situations where at least one of the trade unions had less than 55% membership evidence.

The Board noted section 103(6) (a) of the *Labour Relations Act*, which stipulates that “the Board *may* include on a ballot a choice indicating that an employee does not wish to be represented by a trade union”. On the facts of the particular case, the Board ordered a representation vote without the no union option. In the Board’s view, when two unions come before the Board with membership evidence in excess of 55% such that each, on its own, has a level of membership support that would normally enable it to be certified outright, the contest is properly viewed as a contest between the unions. This conclusion is reinforced by the fact that none of the membership evidence was challenged. Further, the statement of desire of the objecting employees had to be ignored, pursuant to Board policy, as none of the objectors appeared at the hearing to give evidence in support of the petition. The existence of overlapping membership support did not in any way cast doubt on the credibility of the membership evidence. *Bioshell Inc.* [1983] OLRB Rep. Apr. 843

### **Inflation Restraint Act extending life of Collective Agreement**

The trade union applied under section 89 of the *Labour Relations Act*, alleging that the employer violated section 13 of the *Hospital Labour Disputes Arbitration Act* (“H.L.D.A.A.”). Section 13 of the H.L.D.A.A. freezes all terms and conditions of employment where notice to bargain has been given, and where “no collective agreement is in operation”. The issue in this case was whether the complaint was properly brought, as it was argued by the employer that a collective agreement was in operation. Although the collective agreement had by its own terms expired, the issue was whether the *Inflation Restraint Act*, S.O. 1982, c.55 (“I.R.A.”) had the effect of extending the life of the agreement.

The Board noted that the I.R.A. applied to the parties, since the employer was a hospital and was therefore covered by section 6(1)(d) of the I.R.A. Next, the Board inquired as to whether the collective agreement in question was actually extended by the I.R.A., and the Board determined that section 9 had the effect of continuing the otherwise expired collective agreement in force. The Board therefore concluded that there was by operation of law a collective agreement in force between the parties at the relevant times. In support of its conclusion that the collective agreement’s life was extended, the Board noted that the I.R.A. suspends the right to resort to conciliation or interest arbitration under the H.L.D.A.A. The Board therefore dismissed the trade union’s complaint. *Doctors Hospital*, [1983] OLRB Rep. Apr. 500.

### **Format of petition accepted by Board**

A group of employees applied for a declaration terminating the bargaining rights of the trade union. In support of their application, the applicant employees submitted a petition with a sufficient number of names to warrant a decertification vote. The petition contained a list of signatures, and on the base of all the names was hand printed, “The above employees have signed freely on termination of union 204 at K Mart 5417”.

The applicants testified that when the employees signed the petition, it did not contain the words printed at the base of the names. Their explanation was as follows: when the applicants initially attended the offices of the Labour Relations Board, they were informed by an official



who they could not identify that Form 17 was the correct document to complete in an application for decertification. However, if there was insufficient space on Form 17, then another piece of paper could be used so long as the signatories were shown Form 17. The applicants further testified that when the petition was filed with the Board another official whom they could not identify required them to add a heading of some sort to the document. They therefore added the words at the base of the names.

For a considerable period of time the applicants were involved in their decertification activities. The applicants testified that each signatory was shown Form 17 prior to signing.

The applicants argued that the Board ought to consider the petition in conjunction with Form 17 as sufficient evidence in writing of the desire of the employees who signed the petition to oppose the union. The fact that the employees no longer wish to be represented by the trade union is supported by the oral testimony of the applicants, which showed a pattern of meetings in opposition to the union, as well as trade union behaviour at a contract ratification meeting which was unacceptable to some employees.

The employer, in support of the application, argued that the Board must adjudge the “ostensible wishes” of the employees from the direct sponsors of the petition and the circumstances. The union cited a number of cases which in its estimation stood for the proposition that all “blank” petitions were seriously flawed because, even with an explanation, they did not indicate signification of opposition to the union in writing.

The Board distinguished the cases cited by the union. In those cases, the petitions were orally explained to the signing employees. In the present case, one of the Board’s own forms – Form 17 was used to explain to employees what they were about to sign. The Board referred to the problem of having the written signification of opposition to the union physically separate from the document containing the signatures. The validity of such documentation depended on credibility. The Board concluded that the demeanour of the witnesses and the relevant history of events meant that the signatories to the petition were in fact shown Form 17. Thus there was adequate evidence in writing of opposition to the trade union, and a representation vote was ordered. *K-Mart Canada Limited*, [1983] OLRB Rep. Apr. 561.

### **Termination petition held voluntary**

The applicant employee sought to terminate the bargaining rights of the trade union, pursuant to section 57(2) of the *Labour Relations Act*. The trade union opposed the application arguing that the petition submitted by the applicant was incorrect in form and did not reflect the voluntary wishes of the employees in the bargaining unit.

The applicant was an employee of the employer for about 27 years. During a recent strike, following certification, he made his opposition to the union well known. He consulted counsel, who advised him as to the procedure for a termination application, and who also advised him not to consult management with respect to his efforts to terminate the union’s bargaining rights. The applicant collected employee signatures in opposition to the union during the day, on his own time, about 100 yards from the employer’s premises. The applicant submitted two separate petitions. The second petition was delivered to the Labour Relations Board by a secretary employed with the employer, on her lunch hour; she was also a member of the bargaining unit. The applicant had no managerial functions within the employer’s operation.

The Union raised a number of objections to the applicant's petition. First, the union noted that the preamble to the petition referred to the local union, while in fact the International union was the certified bargaining agent. The union argued that the Local referred to in the petition merely administered the affairs of the bargaining unit. The Board rejected the union's objection to the petition. The Board found that the Local conducted all union meetings, and held itself out as the bargaining agent. As there was no other union involved, no possibility of confusion existed. The fact that the document was drafted by laymen was also a relevant factor. The Local in question was an agent of the International. The test to be applied is whether the intention and purpose of the document is clear and unequivocal in the minds of the persons signing.

The Board then considered the union's contention that the petition was not voluntary. Specifically, the union argued that the applicant's position in the plant rendered the signatures involuntary. The Board rejected this contention. The applicant had no managerial or supervisory functions. The Board will look with some care at a petition filed by an employee who is particularly close to management. But such an employee should not lightly be deprived of the right to participate in the processes under the Act respecting union representation. Further, the strike which preceded this application essentially revealed the position of each employee regarding the union. There was no reason for employees to feel they would be revealing their attitudes toward the union.

The Union also referred to the fact that a company secretary delivered one of the petitions to the Board. The Board refused to ascribe any weight to this fact. The employees were unaware of her involvement, and so it was of little consequence. The fact that she was a member of the bargaining unit was also considered relevant.

The union referred to the fact that the applicant gathered signatures openly at the plant gates. The Board rejected this objection as well. There was no evidence that any member of management came through the gates at the relevant times. The Board agreed that the possibility of observation by members of management must be carefully examined, but that this factor carried little weight in the particular case. There was no evidence to the effect that management was present at all at the plant at the relevant times. Moreover, with the building being at approximately 100 yards distance from the place where the applicant stood, it was unlikely that the employees would have felt a looming and unseen presence as they were approached by the applicant.

The union raised evidence of a meeting in which a member of management, following the strike, informed employees who had not participated in the strike that raises and promotions could only be forthcoming with regard to the collective agreement, and would therefore be restricted under the union. The Board stated that there was no factual link between this meeting and the applicant's petition. There was no evidence that employees were aware of the statement; or that the employer communicated to any employees that it intended to support a petition for termination.

The Board applied the test of whether the petition represented a reliable expression of employee wishes, reasonably free from a concern that their expression one way or the other would come to the knowledge of their employer. On the other hand, the Board also stated that employer knowledge that a petition is being taken up against a union, or the recognition by employees that an employer would prefer to be without a union, were not in themselves matters which disturbed the Board. Based on this definition of "voluntary", the Board accepted the applicant's petition and ordered a representation vote. *Irwin Toy Limited*, [1983] OLRB Rep. Apr. 536.

### **Enforcement of unsatisfied arbitration award not proper purpose for seeking related employer declaration**

The applicant union had a collective bargaining relationship with Sepcographics Incorporated, which is a wholly owned subsidiary of Total Marketing Incorporated. In an arbitration award, Sepcographics was ordered to pay \$3,403.39 to the applicant. At the time Sepcographics was insolvent and subsequently made an assignment in bankruptcy. The arbitration award which remains unsatisfied was registered in court as a judgment debt. The union, seeking to realize the judgment against the parent company Total Marketing, sought a declaration that Sepcographics and Total Marketing are related employees within the meaning of section 1(4) of the *Labour Relations Act*.

The Board noting that section 1(4) was enacted for the limited purpose of preventing the undermining of bargaining rights, refused to extend that provision “to give a party to a collective agreement the right to a “deep pocket” recovery of an unsatisfied debt against a related corporation.” While the Board sympathized with the hardship suffered by the union it stated that absent clear and unequivocal language in the Act, section 1(4) could not be interpreted as providing a remedy for the situation. *Total Marketing Incorporated*, [1983] OLRB Rep. Apr. 616.

### **Proposed new plants included in unit**

This was a certification application. The employer’s existing plant was within the city limits of Cornwall, but the evidence was that two plants were currently being constructed some three miles away and outside the city limits. The Board held that where a relocation is intended at the time of certification, and the new site is within the labour market of the existing site, the bargaining unit should be described to embrace the new location. Accordingly, the unit was described to include the two new plants. *Dynamic Closures Limited*, [1983] OLRB Rep. Apr. 521.

### **Employer communications within bounds of free speech – Breach of silent period rule not causing Board to set aside vote**

In an application for certification by way of a pre-hearing vote, OPSEU lost the vote. However, it requested the Board to set aside the results of the vote and certify the union under section 8 or alternatively to direct a new vote and award damages to the union. For the relief requested, OPSEU relied on three letters received by employees, two originating from the management of the hospital and the other presumably from a rival trade union. In addition, the union relied on the fact that the word “NO” was discovered written on the voter’s screen by an unknown person.

The Board reviewed the contents of the employer letters and held that, even when read in the context of the letter written by the rival union, there was nothing in the contents which breached the Act. The communications were found to be within the bounds of the freedom of expression guaranteed under section 64 and not constituting coercion, intimidation, threats, promises or undue influence. While the Board found that one of the employer letters had been delivered to two employees (out of 285) on the voters’ list in breach of the silent period, it did not find the breach to be of such a nature as would cause the Board to take any action. The Board stated that it was safe to speculate that the writing on the screen was done by one of the employees. It was covered up by the returning officer immediately upon being discovered.

Although the word “NO” remained on the screen for an indefinite period, the union scrutineer signed the “Confirmation of Conduction of Election” form. In the circumstances the Board was



not prepared to conclude the employer had breached the Act in this regard or that the vote was affected to the extent that the Board should disregard its results. Accordingly, the application was dismissed. *Toronto General Hospital*, [1983] OLRB Rep. Apr. 607.

### **Preference to blind person not breach of duty of fair representation**

This was a complaint of unfair labour practice alleging that the respondent union had breached the duty of fair representation. The collective agreement in question, while providing that applicants for job vacancies be considered on the basis of merit, ability, experience and seniority and giving priority to employees in the department where the vacancy occurs, also provided that registered blind persons will be given preference in transfers, promotions, demotions, lay-off and recall.

The complainant was fully sighted and during his short period of employment had impressed management with his abilities and qualifications. When a vacancy arose for a circulation clerk lead hand, the only applicants were the complainant and one Mrs. Davey, a registered blind person, who had greater seniority than the complainant. The employer selected the complainant to fill the position. Mrs. Davey filed a grievance requesting that she be awarded the job. The union, which had throughout taken the position that under the collective agreement Mrs. Davey was entitled to do the job, referred the matter to arbitration, when it was not resolved during the grievance procedure. The union's interpretation of the agreement was that in a competition between a sighted person and a blind person, the latter must necessarily be preferred.

While the complainant asserted that the union had a duty to represent him at the arbitration hearing, the union took the position that it cannot represent both him and Mrs. Davey. Accordingly, at the hearing the complainant was left to represent his own interest and chose not to participate actively. The union on the other hand represented Mrs. Davey's interests. At the time of the Board hearing, the arbitration board had not yet handed down its award.

Before the Board, the complainant alleged, *inter alia*, that the union favoured Mrs. Davey's interests over his and ignored his rights because he was sighted. The Board, noting that trade unions are frequently obliged to take positions which favour one employee over another, stated that this by itself does not result in a breach of the duty of fair representation. The conduct of the union was based on its honest interpretation of the collective agreement. The Board concluded that the union's interpretation was not so unreasonable as to indicate that it was reached in an arbitrary manner.

The Board also concluded that the union's preference given Mrs. Davey over the complainant's interests was not discriminatory. Section 68 is aimed at protecting discrimination on the basis of invidious or unsupportable grounds. The Board said "We live in what is very much a sighted world. Unfortunately all too often blind persons are passed over for jobs even when they may be qualified to perform them. Against this background, I do not believe that a preference to registered blind employees is the type of discrimination which the legislature sought to prohibit by section 68 of the Act". The complaint was dismissed. *J. Lewis Humphreys and Service Employees Union, Local 204*, [1983] OLRB Rep. Apr. 530.

### **Union certified without vote under section 8**

The applicant trade union sought certification, and charged the employer with committing unfair labour practices in breach of, *inter alia*, sections 64, 66 and 70 of the *Labour Relations*



*Act.* As a result of these alleged violations, the union argued for automatic certification without a vote pursuant to section 8 of the *Act*.

The employer manufactured insulating glass. Active discussion among the employees about the desirability of joining a trade union began to take place. There appeared to be widespread support for a union, and seven employees – including four who were soon to be discharged – attended at the union hall to pick up blank membership cards.

The following day, the employees were summoned to an unusual meeting. One of the owners of the plant said that a union would, if established, “kill the company”, and repeated this phrase several times. He said that the company would have to shut its doors if a trade union was established, and that everything – such as overtime – would be restricted. Furthermore, the owner said that the company’s “open door” policy would no longer be possible. The company’s financial difficulties were outlined, and the employees were told they were lucky to have a job. The owner suggested an employee committee instead of an outside trade union. He asked employees to be patient, and that wage increases would soon be forthcoming. At the end of the meeting, the owner asked anyone who still supported the union to raise his hand. No one did. The evidence suggested that the owner’s speech was effective, in that employees who had earlier indicated an interest in the trade union no longer were willing to sign membership cards. In total, 30% of the bargaining unit employees signed membership cards.

The day following the meeting four employees active in organizing the trade union in the plant were terminated. Two of the four were specifically told they were being terminated for opposing the company. All four separation slips indicated that the reason for termination was “causing dissension among employees”. One of the owners admitted to the Board that the four were terminated for their trade union activities. Subsequently, the four employees were reinstated as part of a “without prejudice” settlement.

The Board concluded that the employer’s remarks to its employees at the meeting included direct and immediate threats to their job security and continued livelihood, should they seek to exercise their statutory right to form or join a trade union. Those remarks constituted a serious breach of sections 64 and 70 of the *Act*. The Board also held that the discharge of the four employees was motivated solely by the employer’s belief that they were supporters of the trade union, and constituted a breach of sections 64, 66 and 70 of the *Act*.

The Board proceeded to consider the section 8 applications for certification. The Board noted that three conditions must be satisfied so as to entitle the union to be certified under section 8: first, the employer must have contravened the *Act*; second, the contravention must be of such nature that the true wishes of the employees would not likely be ascertained in a representation vote or otherwise; and third, the applicant union must have membership support adequate for collective bargaining.

The first two conditions were satisfied. First, the Board had found that the employer had contravened the *Act*. Second, this was clearly a case where the true wishes of the employees were not likely to be ascertained by the conventional means available. The Board was left to determine the third condition, i.e. whether there was membership support adequate for collective bargaining. The Board noted that the statutory predecessor of section 8 required the support of more than 50% of the employees in the bargaining unit. By eliminating the 50% requirement, the Legislature contemplated the possibility of certification even where the applicant’s membership support falls

below the minimum level required for entitlement to a representation vote. Where an employer's illegal response is so massive and so early as to prevent a trade union from ever attaining the level of support needed for a representation vote, the union may be entitled to be certified under section 8. The Board expressed sympathy with the need for small businessmen to economize during difficult economic times, but stated that these needs cannot be enforced at the expense of the statutory rights of others.

On the facts of the case under consideration, the Board noted that had it not been for the unlawful interference of the employer, the union might well have garnered at least the 35% support necessary for the taking of a pre-hearing representation vote. The evidence was that a substantial minority had already signed membership cards at the very beginning of the union's campaign. A number of other employees expressed interest in the trade union. This support was likely stifled by the speech to the employees by one of the owners, as well as the discharge of the four union supporters. The Board held that the union had a substantial and workable core of support. Accordingly, the Board ordered that a certificate be issued to the applicant union in respect of the bargaining unit. *Trulite Industries Limited*, [1983] OLRB Rep. May 821.

#### **Absence of local's name in application not fatal where no confusion**

Local 586 of the International Brotherhood of Electrical Workers ("I.B.E.W.") applied for certification. The membership evidence provided by the applicant Local showed, in the case of each member employee, the name of the I.B.E.W. In no case was Local 586's name indicated on any of the employee membership applications. Each membership card did have a space in which to enter the number of local union but in each case it was left blank. Membership fees were \$2.00 per employee, and the receipts provided by Local 586 to the employees did contain Local 586's name.

The Board considered whether the applicant Local's membership evidence was valid. The Board referred to its decision in *Bernardin of Canada Limited*, [1975] OLRB Rep. Oct. 737, where on similar facts, the membership evidence was rejected. In *Bernardin*, the Board indicated that evidence of membership in the international parent will not be used as evidence of membership in a local thereof. The Board in the present case noted the applicant Local's argument, to the effect that its evidence was materially different than the evidence before the Board in *Bernardin* and that there was no doubt that the employees in the present case were knowingly applying for membership in the applicant. The Board concluded that the applicant's organizer may have been careless, but on the facts, it was clear from viewing together the application and related receipt, that each employee knew that he was signifying the applicant Local to be his exclusive bargaining agent. The membership evidence was held to be valid, and a certificate issued to the applicant. *Union Electrical Supply Co. Ltd.*, [1983] OLRB Rep. May 829.

#### **No employee confusion as to identity of union**

This was an application for certification by a local union. In a pre-hearing vote conducted by the Board, a majority of employees in the bargaining unit voted in favour of certification. However, the respondent employer argued that the Local was not entitled to be certified. Prior to applying for certification, the Local was reorganized. It was expanded to cover other local members of the parent International in various municipalities. Furthermore, the Local's name was changed from "Hotel, Restaurant and Cafeteria Employees Union, Local 75" to "Hotel Employees and Restaurant Employees Union, Local 75". In addition, the parent International also underwent a change in name.

Despite the Local's change of name, the application for certification was filed in the *old* name of the Local. Furthermore, one set of membership cards included the old name of the International, and substantially (but not precisely) the old name of the Local. Another set of membership cards included the new name of the International but the old name of the Local. Further variations could be found on the pre-hearing ballot, as well as the Local's campaign literature.

The respondent employer argued that the mergers had the effect of creating a different trade union from the applicant. In the alternative, the employer argued that there would be confusion in the minds of the employees as to which union they were joining, such that the Board should disregard their membership evidence and the results of the representation vote. The applicant Local argued that neither the merger nor the change of name affected the essential identity of Local 75. Further, the innocent name in the application was a simple and perhaps natural mistake. The Local pointed out that there was not the slightest evidence of any actual confusion on the part of the employees. At all times there had been only one union on the scene soliciting support, and it was clearly Local 75.

The Board noted that at all relevant times, Local 75 was the only trade union active at the employer's business. Despite the variations as to name, all documents and literature generally referred to "Local 75". After its merger with the other locals, Local 75's operations remained substantially identical as previously. The officers, business agents, address, bank account and collective bargaining activity remained the same. While the Board noted that the trade union had been sloppy in its application, and that such sloppiness ought not be encouraged, despite mergers and name changes, there had been no substantive change in Local 75's legal identity; nor was there any real basis for confusion as to what the employees were joining or voting for. To accept the employer's argument in this case would be unduly technical, as well as inequitable. This was not a case of confusion between two locals, or between a local and a parent. The employees clearly knew which local they were supporting. The Board held that the membership evidence and pre-hearing vote were valid, and issued a certificate to the applicant. *Food Corp. Limited*, [1983] OLRB Rep. May 636.

### **Transaction not finalized – Successor employer application premature**

The applicant trade union sought a declaration that the respondent company had or would shortly acquire the "business" of the original employer. The original employer owned and operated a nursing home, and was licensed by the Ministry of Health under the authority of the *Nursing Homes Act*. At the time of the hearing, the original employer was still operating its nursing home to partial capacity, but had given its employees notice of termination pursuant to the *Employment Standards Act*. The original employer and the respondent had executed an agreement of purchase and sale, in which the respondent was to acquire the employer's license, purchase land from the employer at a different location from the old nursing home, construct a new facility, and have the residents of the old facility transferred to the new one. The new facility was not yet completed, and none of the residents had been transferred. The respondent company had not yet received formal Ministry of Health approval for the necessary operating license. Further, it was not yet clear what would happen with the old facility; there was some possibility that it would remain open.

The Board noted that both the trade union and the respondent were interested in having the Board make a section 63 declaration on the facts as they stood at the date of the hearing. Nevertheless, the Board concluded that no determinations should be made until the transactions said to constitute a transfer of a business have been completed. The Board stated that preliminary opinions based on hypothetical facts could create as much mischief as they resolve, if not more.



Not only would such an opinion encourage a revision or restructuring of transactions to which section 63 might otherwise apply but, in addition, there could be litigation about the effect of the opinion itself and whether the transaction was actually consummated in the form upon which the Board's opinion was based. In the Board's view, since close cases will often turn on subtle shadings of fact, it would be unwise to render opinions on what will inevitably be less than complete information. Parties in the labour relations community could frequently be tempted to refer hypothetical fact situations to the Board on a number of issues, section 63 being only one of them. The Board must therefore decline to give preliminary opinions on hypothetical fact situations. *Daynes Health Care Limited*, [1983] OLRB Rep. May 632.

### **Settlement of grievances during negotiations not breach of fair representation**

The complainant claims that his trade union violated the section 68 duty of fair representation in its handling of his grievance against the employer. During a lengthy strike, picket line activity became particularly intense and obstructive. In response, the employer selected a number of employees for discharge and other forms of discipline. The union's intervention led to an understanding as part of a strike settlement that there would be no discharges, that any discipline imposed would be no more severe than 30 day suspensions, and that the parties would expedite grievances filed in relation to such disciplinary action. Subsequently, 26 employees were disciplined and 23 grievances were filed with the Ministry of Labour pursuant to the expedited arbitration procedure provided by section 45 of the *Labour Relations Act*. The grievances were consolidated by agreement of the parties, so as to expedite the arbitrations and to avoid the repetition of evidence.

The union decided to retain counsel, rather than handling the case through its lay staff. In total, 2 lawyers and an assisting law student handled the matter. Counsel met with all of the grievors prior to the commencement of the case and investigated the grievances thoroughly. During the hearing, the arbitrator made an interim ruling that was harmful to the union's arbitration strategy. Counsel considered the situation in its entirety, and decided that a settlement would be the best solution. The settlement was approved by the grievance committee of the union, even though such approval was unnecessary and even unusual. The complainant originally received a five-day suspension for his activities on the picket line. The settlement resulted in a commitment by the employer to rely upon the five-day suspension only in the context of any future alleged misconduct arising out of "participation in any future work stoppage whether legal or illegal..." The union contended that the settlement was likely more favourable to the complainant than an arbitration award might have been. There was ample evidence of the complainant's obstructive conduct on the picket line. Counsel for the union in the arbitration case was convinced that had the complainant taken the witness stand, he would have prejudiced his case. Counsel wrote the union a six-page opinion letter recommending a settlement.

The Board held that the facts reveal nothing to suggest a violation of section 68 of the Act. The consolidation of the grievances was neither arbitrary nor discriminatory, and was even commendable. The hearing was conducted in a perfectly reasonable manner. The union's counsel had a complete grasp of the case, and were fully competent to recommend settlement. There was no evidence that the complainant's case was settled as a trade-off for another employee's success in the grievance procedure. There was no evidence that the settlement was motivated by the desire to save money either, although the Board noted that both parties were legitimately concerned with the time and cost involved in such a massive arbitration proceeding. The complainant's grievance was settled after a careful consideration of the grievor's conduct and the applicable legal principles. The Board dismissed the complaint. *Stelco Inc.* [1983] OLRB Rep. May 771.



### **Infiltration by spy during lawful strike held unlawful**

The union originally filed a complaint against both Automotive Hardware and Securicor Investigations, alleging that they had entered into an agreement under which the latter would provide one of its employees, to pose as an employee of Automotive, for purposes of infiltrating the union and acting as “agent provocateur” during a lawful strike against Automotive. Early in the proceedings, the union settled the strike with Automotive and withdrew the complaint against Automotive. The Board in a prior decision ruled that the complainant union was entitled to proceed against Securicor alone.

In proceedings against Securicor, the Board heard extensive evidence relating to the activities of the person inserted into the union. He posed as a striker, participated in picketing and collected strike pay. The Board received extensive documentary evidence of regular reports filed by him with Automotive, many of which were concerned with union related matters, including the views of the strikers with respect to the issues in dispute at the bargaining table and the rifts within the union. The Board also found that the infiltrator engaged in unlawful activity and counselled others to do the same while posing as a striking employee.

The Board held that the conduct of Securicor through its employee constituted interference in the administration of the trade union and with the representation of the employees, contrary to section 64 of the Act. The Board stated *obiter* that “... the infiltration of a trade union by an employer or anyone acting on behalf of an employer during a strike or a lockout or in anticipation of a strike or lockout is, *per se*, a violation of the Act; that is, it is unlawful regardless of the stated purpose for which the infiltration is undertaken or its effect.”

The Board found that Securicor’s conduct prolonged the strike by an additional 5 weeks and directed Securicor to reimburse the employees for lost earnings during this period and also to compensate the union for strike pay during this period. The amounts of lost earnings and strike pay compensable were reduced in half in view of the fact that had the union not withdrawn its complaint against Automotive, Automotive may have been liable for one-half of the compensation owing.

In addition, the Board issued a declaration and a cease and desist order. Taking into account the ongoing coercive impact Securicor’s conduct is likely to have on employees generally in the province, the Board also directed Securicor for a period of two years to give notice in the form prescribed by the Board’s decision to any trade union that represents the employees of an employer which retains Securicor in anticipation of or during any strike or lockout. *Securicor Investigations and Security Ltd.* [1983] OLRB Rep. May 720.

### **Concerted refusal to apply for teaching positions not a strike**

The Board of Education applied for a declaration of unlawful strike under the *School Boards’ and Teachers’ Collective Negotiations Act* or alternatively, under the *Labour Relations Act*. The respondent union issued “pink letters” to the applicant’s teachers in the regular day school program, directing them to refrain from applying for or accepting teachers’ positions in the Board’s Continuing Education Program. Members were advised that if they did not comply, they would not receive assistance from their union should they later have contractual difficulties. Most of the teachers complied with the union’s request.

The Board held that the refusal by the teachers to apply for positions in the Continuing Education Program does not constitute a strike within the meaning of the *S.B.T.C.N.A.* The Board ruled that the *S.B.T.C.N.A.* is designed to regulate teachers/school boards relations in respect of regular day school employment and that the reference to “school program” and “school” in the definition of “strike” in that Act was a reference to school programs and schools carried on in connection with the regular school year.

The Board also found that a strike had not taken place within the meaning of the *Labour Relations Act*. Under the definition in the Act, a “strike” is a concerted refusal by “employees”. The teachers in question were not employees of the applicant in respect of the Continuing Education Program at the time of the refusal. The Board found, therefore, that their refusal related to work which was beyond the scope of their employment relationship; there being no obligation upon the teachers in question under the statute or under the collective agreement to staff the Continuing Education Program. Consequently the application was dismissed. *Ottawa Board of Education* [1983] OLRB Rep. May 694.

#### **Manipulation of negotiating committee and misrepresentation of employer’s offer breach of section 68**

A group of the City’s “technical” employees, who had occupied the higher paid job categories, filed a complaint against their union. The union had, during recent sets of negotiations, settled for lump sum increases which compressed the wage differentials between them and the lower paid job categories. When two members of the union’s negotiating committee opposed this approach, they were removed from office. The complainant not only alleged that this conduct was an unfair labour practice but that misrepresentation by the negotiating committee of the employer’s offer when it was submitted to the membership contravened the duty of fair representation.

The facts required the Board to examine both the substantive and procedural aspects of the duty imposed by section 68. The Board held that the union’s decision to obtain the same amount for all job categories was motivated by a desire for a more equitable response to the relative impact of inflation on the different groups of employees. Thus, there was no violation of section 68, although the interests of the technical employees conflicted with those of the majority of employees, since the objectives of the majority were achieved by means that were honest, open and devoid of ill-will or hostility aimed at the minority.

The Board also found that the removal of the two committee members was not a breach of section 68 although there was no specific provision in the union’s by-laws for removal of committee members. The two members had taken a position clearly opposed by the membership. The removal was the culmination of an internal political struggle in which the superior political skill of the other members of the committee had prevailed. The union had taken procedural safeguards to ensure that the decision was made properly.

However, the Board expressed concern with respect to the restructuring of the negotiating committee after the removal of two of its members and the misrepresentation of the employer’s offer when it was submitted to the membership. While the union’s by-laws required the committee to be comprised of five members including a Chairman, the committee was restructured to consist of only four members with no Chairman. In the absence of an explanation, the Board concluded that this was done to ensure that the technical employees could not obtain majority support in the committee. Also, in response to a direct question from a member, the union stated that there was only one offer from the employer (i.e. the one favourable to the union’s objective) when in

fact there had been three alternative offers, including one favouring the position of the technical employees. Although a union may not have a positive duty to submit an offer to its membership, the union does have a duty of fair and honest disclosure when it does so. The Board concluded that the manipulation of the negotiating committee structure contrary to the by-laws and the misrepresentation of the employer's offer were designed to suppress the interests of the minority. While the departure from a union's by-laws by itself does not constitute a breach of section 68, the motive for doing so and the misrepresentation caused the Board to find a breach of the duty of fair representation on the part of the union through its officials. *Corporation of the City of Thunder Bay*, [1983] OLRB Rep. May 781.

### **Persons supplied by employment agencies employees of respondent**

The essence of this unfair labour practice complaint was that the employer had contravened the Act by terminating or reducing the hours of the grievors, who were persons supplied by various employment agencies, because of a grievance filed by the union claiming that these persons were covered by the collective agreement. The union also contended that the employer contravened section 64 when it substantially increased its use of workers supplied by employment agencies following the certification of the union. The employer argued that the persons in question were not its employees but employees of the respective employment agencies which supplied them.

The Board found that the respondent was at least in part motivated by anti-union animus when it substantially increased its use of agency workers after the union was certified. The respondent sought to undermine the union's bargaining rights by "contracting in" temporary employees to perform work that would otherwise have been performed by employees in the unit for whom the union was certified.

The Board found the following criteria to be helpful in determining which of the two entities is the employer for purposes of the Act:

1. the party exercising direction and control over the employees;
2. the party bearing the burden of remuneration;
3. the party imposing discipline;
4. the party hiring the employees;
5. the party with authority to dismiss the employees;
6. the party who is perceived to be the employer by the employees; and
7. the existence of an intention to create the relationship of employer and employee.

Although no particular order of priority exists, considerable significance is attached to "overriding control". Examining the relationship that existed between the employees, the agencies and the respondent, particularly the relative permanence of the relationship, the existence of bargaining unit employees working side by side with agency workers performing identical work under common supervision and control and the anti-union animus which was a significant element in the expanded use of agency workers, the Board found that the agency workers were employees of the respondent at all material times for the purpose of the Act.

On the evidence, the Board concluded that the discharges and the reduction of the grievors' hours were motivated at least in part by the fact that the grievance was filed. Motions by the respondent to defer to arbitration and to apply the doctrine of estoppel against the union were denied. However, as a result of the union's undue delay in challenging the respondent's expanded



use of “temporary” employees, the Board declined to grant any relief in respect of the period which preceded the filing of the grievance. *K-Mart Canada Limited* [1983] OLRB Rep. May 649.

### **Enforcement of settlement of safety complaint**

The complainant employee alleged that he was dealt with contrary to section 24 of the *Occupational Health and Safety Act* (“O.H.S.A.”). The complainant refused to do work which he claimed he had a right not to perform, pursuant to section 23 of the O.H.S.A. which provides that an employee may refuse to work where he has reason to believe that his equipment or the condition of the work place poses a hazard. Section 24 protects employees from being discharged or otherwise penalized if they express *bona fide* safety concerns, whether or not those concerns are proved to be accurate. As a result of the complainant’s refusal to do the allegedly dangerous work, he was discharged by the respondent employer. He proceeded to file a section 24 complaint. A Labour Relations Officer was appointed to attempt to effect a settlement between the parties. The parties agreed that the complainant would be reinstated without back-pay, and that the complainant would withdraw the complaint. The settlement was agreed to, on the respondent’s behalf, by the respondent’s sales manager, but it was subsequently vetoed by the president of the respondent company. As a result, the complainant was not reinstated.

The complainant sought the enforcement of the original settlement agreement. He therefore requested reinstatement, together with back-pay effective from the date he would have been reinstated had the settlement not been altered by the respondent. Furthermore, the complainant asked for legal and other costs expended in the second proceeding before the Board. In the alternative, the complainant asked that the original complaint be re-litigated since the respondent reneged on the settlement. The respondent employer argued that as the sales manager did not have the authority to enter into the settlement, the agreement was invalid and unenforceable.

The Board rejected the suggestion that the sales manager had no authority to agree to the settlement. The settlement ought therefore to be enforced. The Board stressed that it was enforcing the agreement of the parties, which was binding upon them, rather than inquiring into the events of the complainant’s case.

The Board ordered that the complainant be reinstated, and that he be compensated for all wages and benefits lost from the date he would have been reinstated had the settlement been adhered to. The complainant’s request for costs, however, was rejected. The Board saw no reason to depart from its established practice of refusing to award legal costs. The Board noted that if the complainant had not been successful, the respondent would not have been able to get its legal costs either, and remedies ought to be reciprocal. *The Potato Centre*, [1983] OLRB Rep. June 940.

### **No prejudice because of delay – Board entertaining complaint**

This was an application by two complainant employees under section 89 of the *Labour Relations Act*, who charged their union with violating the duty of fair representation required by section 68 of the Act. The respondent trade union requested the Board to refuse to entertain the complaint for three reasons: first, because of the delay in filing the complaint; second, because the complaint did not disclose a *prima facie* case; and third, because of the insufficiency of particulars given by the complainants.

On the issue of delay, the Board noted that the complainants’ section 68 complaint arose out of their discharges from their employment on February 16, 1982. The union attempted to have



them reinstated, but the employer was unwilling to agree to reinstatement. On or about March 12, 1982 the union's business agent advised the complainants that as a result of legal advice, the union decided not to proceed with arbitration of the discharges. The section 68 complaint in respect of this refusal to proceed with arbitration was not filed until November 2, 1982. There was, therefore, a delay of almost eight months between the time the cause of action arose and the time of the filing of the complaint. The complainants explained the delay as being attributable to delay in waiting for legal aid; time consumed in communicating with the union's head office; and financial difficulties by one of the complainants.

The Board concluded that the complainants' explanation could not sufficiently explain away all of the delay. The Board noted that delay could be either "extreme" or "unreasonable". Extreme delay warrants a dismissal on preliminary motion. Unreasonable delay may affect the remedy but does not deny the complainants the opportunity to prove the violation of the act. Section 89(4) of the Act gives the Board discretion to decide whether it will inquire into a complaint. Section 72 of the Board's Rules of Procedure requires that a complainant file allegations of wrongdoing "promptly" upon discovery of the wrongdoing. If the Board concludes that allegations have not been filed promptly, the Board may refuse to allow the evidence to be adduced or, ultimately, may only permit the evidence to be adduced upon specified terms or conditions. The Board is conscious of the need for expedition, and where there is delay, the onus may shift to a complainant to satisfy the Board that there are compelling labour relations reasons to cause the Board to exercise its discretion and entertain a complaint. The Board went on to cite *The Corporation of the City of Mississauga*, [1982] OLRB Rep. March 420, wherein the Board listed a number of factors relevant in determining how to dispose of a case involving delay. These factors are: the length of the delay and the reasons for it; when the complainant first became aware of the alleged statutory violation, the nature of the remedy claimed and whether it involves retrospective financial liability or could impact upon the pattern of relationships which has developed since the alleged contravention, and the possibility of deteriorating evidence. Further, the Board in the *Mississauga* case noted that unless circumstances are exceptional or there are overriding public policy considerations, the time limit should be measured in months rather than years.

On the facts of this case, the Board concluded that the delay was not "extreme". The complainants were tardy, but this is partly explained by their desire for legal assistance and deciding how they could afford such assistance. There was no evidence that either the union nor the intervening employer were prejudiced. The extent of the delay has not been so lengthy as to suggest that there would be severe prejudice to the parties' labour relations if the complainants should be reinstated with back pay. The Board held that the union's motion with request to delay ought to be dismissed.

The Board then considered the union's allegation that the complaint failed to disclose a *prima facie* case. The complaint contained little particulars, but it did claim that the refusal to go to arbitration was arbitrary, discriminatory and in bad faith. Section 71 of the Board Rules of Procedure permits the Board to dismiss a complaint when no *prima facie* is revealed. The Board held that a *prima facie* case was revealed by the complaint, and dismissed the union's motion. The absence of particulars did not, in the Board's view, reveal the lack of a *prima facie* case. The complainants sufficiently alleged a violation of section 68 of the Act on the facts as claimed.

Finally, the Board considered the union's claim that the complaint lacked sufficient particulars, as required by section 72 of the Board Rules. The Board agreed that sufficient particulars were lacking. The Board directed that further and additional particulars be given to the respondent union to allow it to prepare its defense. *Caravelle Foods*, [1983] OLRB Rep. June 875.

**Dismissal for soliciting union membership on company premises unlawful – Damages reduced by employer’s bona fide offer to reinstate**

The applicant union applied to the Board for certification without a vote pursuant to section 8 of the Act and filed three complaints under section 89 of the Act, all arising out of an organizing campaign conducted by the union at the company’s plant in London, Ontario.

The evidence before the Board included a tape recording of a company meeting during which the president of the respondent company threatened workers with lay-offs, shut-downs and a general lack of job security as a result of the workers engaging in lawful union activities. Shortly after those meetings, the company discharged three workers who had signed others into the union. The company alleged that these union supporters were terminated because they were soliciting for the union on company premises during working hours. The company cited its general plant rules contained in an “Employees Handbook” to justify its actions. Rule 25 of the Handbook prohibited soliciting for any purpose whatsoever on company premises.

The Board referred to the recent *Adams Mines* decision, and other Board jurisprudence and held that the rule was presumptively invalid to the extent that it prohibited solicitation during non-working time. Since there was little or no evidence that the workers actively solicited membership during working hours, and since there was evidence of the company rule being applied in a discriminatory manner (in that an employees’ association was freely permitted to solicit on company premises during working hours) the Board concluded that the dismissals were unlawful. The Board found that the company’s motivation for discharging the three union organizers was based upon a desire to thwart the union’s organizational campaign. The Board ordered that they be reinstated with compensation to the date that the company offered to reinstate them without prejudice to their claims before the Board. The Board held that the workers could and should have mitigated their losses by accepting the company’s offer of reinstatement. The Board also heard evidence of a substantial number of lay-offs during the organizational campaign. The Board was satisfied that the company had legitimate business reasons for these lay-offs and that they were not caused by an anti-union animus, with the exception of the lay-off of a union organizer who was deprived of the usual bumping privileges arising out of his seniority after he testified before the Board in support of the union.

Finally, in considering whether the union should be certified without a vote pursuant to section 8 of the Act, the Board considered the substantial support enjoyed by the union (over 50%) and the seriousness of the unfair labour practices committed by the company. The Board found that the threats, intimidation and undue influence exerted by the president of the company at the “captive audience” meetings, the contemporaneous discharge of three union organizers, and the subsequent denial of bumping privileges to the union organizer who testified before the Board, created a situation in which the true wishes of the employees could not be ascertained in a representation vote. In addition to granting a certificate without a vote, the Board directed other remedial measures including union access to employee lists and company bulletin boards. *Wilco-Canada Inc.* [1983] OLRB Rep. June 989.

**Employer required to proceed first in section 8 cases where a certification application is consolidated with an unfair labour practice complaint**

This was a consolidated action involving an application for certification pursuant to section 8 of the Act, and a complaint pursuant to section 89 of the Act. The two actions arose out of similar facts, i.e. the termination of eleven employees, and threats made to employees.



Prior Board practice in cases where application was made under section 8 was to require the union to proceed first. However, relying on the reasoning in *Domtar Packaging*, the Board held that it was justified in requiring the employer to proceed first in the circumstances. Due to the nature of the allegations, the legal burden is on the employer by virtue of section 89(5). The Board stated that the bulk of the evidence in the consolidated case would be in respect of the section 89 allegations and that these allegations are the central focus of the matter. In the circumstances, the Board found no reason to depart from the reasoning in *Domtar. Canadiana Pizza Co. Ltd.*, [1983] OLRB Rep. June 872.

### **The right of an employer to send refusers home without pay pending a ministry inspection**

This complaint under the *Occupational Health and Safety Act* arose out of a refusal to work by certain employees of the company on the grounds that the presence of gasoline fumes in the work area posed a health hazard. The company engaged independent engineers to conduct tests. The company repeatedly attempted to convince the refusing employees to return to work on the basis that the plant was determined by the engineers to be safe. One complainant, Mr. Arnold, was told repeatedly that if he did not get back to work his pay would be stopped. When the employees continued their refusal, the company shut-down operations and sent the employees home pending an inspection by ministry inspectors. The inspectors conducted “sniff tests” and determined that certain corrective action was required. The employees did not receive their regular pay from the time they were sent home, although those who qualified received s.u.b. payments under the collective agreement.

The complainants, while admitting that no alternate work was available, argued that nevertheless, the employer’s right to give “other directions” could never include the right to send refusing employees home without pay while the ministry investigation was pending. Secondly, it was argued that the employer’s conduct interfered with the complainants’ right to be present for the ministry inspection and that they were penalized to the extent that they did not participate and were denied the pay they would have received if they participated in the inspection.

The Board disagreed. Recognizing that sending employees home without pay was a common employer response to a lack of work situation, the Board stated that if the legislature intended to prohibit such a response, it would have done so expressly. The words “other directions” in section 23(10)(b) permit an employer, in the proper circumstances, to give a full range of directions. This includes the laying off of employees for refusing to work for whom no alternate work is available, as long as the lay-off is not directed in a fashion which amounts to a penalty or discipline. The Board, in the circumstances of this case held that the employer in sending the complainants home was resorting to the only practical response available and did not act out of a desire to punish the refusers. The Board also found that the refusers were not sent home because they were acting in compliance of the Act, and therefore found it unnecessary to decide whether the lay-off denied the refusers an opportunity for earnings that would otherwise have been present during the investigation through participation in it. The Board also found it unnecessary, on the facts before it, to decide whether refusers are entitled to be paid for the period of investigation and whether failure to pay is in itself a violation of section 24.

However, the Board, noting that the threat to Mr. Arnold that his pay will be stopped if he did not get back to work occurred during the first-tier investigation stage, at which point the employer is not given a right to assign alternate work or give other directions to a refuser, held that directions of this nature amounted to unlawful intimidation contrary to section 24(1)(d). The Board stated that this type of direction negates the right of refusal in section 23. As a remedy

for the contravention found in regard to Mr. Arnold, the Board directed the posting and circulation among managers of a Notice to Employees prescribed by the decision. *International Harvester Company of Canada*, [1983] OLRB Rep. June 898.

### **Union required to permit participation of non-members in strike votes**

The union called a meeting with the intention of conducting a strike vote. Of a bargaining unit of 30 employees, 22 attended at the meeting. However, the employees were told that they could not enter the meeting room and participate in the strike vote unless they joined the union. All of the employees refused to attend. The union had also not held any membership meetings to report to the employees with respect to its bargaining committee's activities. The employees filed a complaint against the trade union, alleging breaches of sections 68 and 72.

The Board held that the union had violated section 72(5) by not permitting the employees to participate in the strike vote and section 68 by not convening any meetings of the employees to review the bargaining.

The Board ordered the union to conduct at least 4 meetings per year; to provide copies and an explanation of the new collective agreement, if there is one, to the employees; to ensure all strike votes in the future are conducted by secret ballot available to all bargaining unit employees; and to mail a notice to all employees in the usual form. *Manor Cleaners Ltd.* [1983] OLRB Rep. June 929.

### **Receivers not successor employers – Not responsible for breaches of collective agreement by insolvent employer**

The applicant union held bargaining rights for the employees of Windsor Packing and a collective agreement was in force. Windsor Packing defaulted on its secured obligations to the National Bank and the Federal Business Development Bank. The banks privately appointed Price Waterhouse and Touche, Ross Limited as receiver/managers. Both receivers decided that the business could not be sold as a going concern and opted to realize on the banks' securities to the extent that they could against the assets of the insolvent company. Price Waterhouse took control of some 23 employees, who were retained in diminishing numbers until the plant and premises were entirely mothballed as of the end of October. Price Waterhouse did not observe the terms of the collective agreement either in the selection of which employees would be retained, or in any of their terms and conditions of employment or lay-off, save that for convenience, it continued to pay them the rates of wages they had been getting under the collective agreement. It did not deduct or remit union dues.

On these facts the union contended that, when the banks and their receivers took over the assets and undertaking of Windsor Packing, along with effective control of the employees, they became successor employers within the meaning of section 63 of the *Labour Relations Act*. The union alleged that as successor employers, the respondents were obliged to remit union dues which were owing from the insolvent employer, and that the failure to do so was a breach of section 64 of the Act. It further contended that even if the respondents were found not to be successor employer, nevertheless they had breached section 64 by their failure to remit the amount of dues owing from Windsor Packing, either out of the assets of the insolvent or of the respondents' own assets.



The Board characterized the union's claim as a request to turn section 63 into "a device for collecting the employers uncollectable collective agreement debts from its solvent creditors." The Board held that, despite the intervention of the receivers, the legal interest of the insolvent company never ceased to exist. The receivers were simply agents of the insolvent company and were acting for the benefit of the company in pursuance of its written authorization in the debenture. Therefore, the Board dismissed the application under section 63.

Dealing with the unfair labour practice aspect of the matter, the Board rejected the proposition that on the private appointment of a receiver, the collective bargaining rights of a union come to an end. The Board found the receiver to be a "person acting on behalf of an employer" within the meaning of section 64. In that capacity, it had interfered with the representation of employees by, and the administration of, the trade union by totally ignoring the union's rights after it took possession of the operation. Therefore, the Board found the respondents, as persons acting on behalf of an employer, had violated section 64, and was liable independently of the liability of the principal insolvent company.

As for the union dues not remitted prior to the receivership, the Board found no evidence that the receivers had directly or indirectly appropriated for itself or for the Bank any union dues or trust funds owing to the union. Therefore the remedy was limited to such dues as it failed to deduct and remit for the period of time during which it became the manager of the insolvent company. *Price Waterhouse Ltd. et al*, [1983] OLRB Rep. June 944.

### **Open period for termination application postponed by Inflation Restraint Act**

The applicant employee sought to terminate the respondent trade union's bargaining rights. Section 57(2) of the *Labour Relations Act* provides *inter alia*, that such applications may be brought "only after the commencement of the last two months of" the collective agreement's operation. While the application was in fact filled within the two month period, the respondent trade union argued that the provisions of the *Inflation Restraint Act, 1982*, otherwise known as Bill 179, had the effect of extending the terms of the collective agreement by another year, thereby rendering the termination application untimely.

The Board referred to its decision in *Broadway Manor Nursing Home*, [1983] OLRB Rep. Jan. 26, which involved an application by one trade union to be certified with the effect of displacing an incumbent trade union. In that case, the Board held that the application, although timely on a simple reading of the collective agreement, was untimely as a result of the provisions of Bill 179. By its terms, Bill 179 applies "notwithstanding any other Act", and this includes the *Labour Relations Act*. Bill 179 extends the operation of a collective agreement, with the effect of postponing the time in which a displacement application can be made, since the last two months of the existing collective agreement commence a year later than the face of the agreement would indicate.

The applicant attempted to distinguish *Broadway Manor* on the basis that that case was a displacement application, pursuant to the certification provisions in section 5 of the *Labour Relations Act*. The present case involved a section 57(2) termination application. While Bill 179 may alter the "open period" in a displacement situation, it did not do so in a termination application, it was argued. The applicant contended that Bill 179 is intended to restrain compensation, and the motivation of employees seeking to adopt the "non-union" option may have nothing to do with a desire for increased compensation. In the applicant's submission, the motivation for the application is key.

The Board rejected the applicant's argument, and chose to follow the *Broadway Manor* decision. The question of motivation can just as easily be made with respect to displacement applications. The applicant was effectively asking the Board to overrule *Broadway Manor*, but the Board stated it had no reason to do so. The *Broadway Manor* decision did not turn on any questions of motivation, but rather on a careful analysis of the language of the two statutes, and the relationship of the statutory scheme for representation applications to the temporary impact of Bill 179 on the scheme for collective bargaining as a whole.

It was also argued that section 57(2)(6) of the Act, which pertains to termination applications, required the Board to distinguish this case from the displacement situation in *Broadway Manor*. Section 57(2)(c) contemplates the preservation of the initial "open period" where the collective agreement has been extended by the parties' default. The collective agreement between the employer and the respondent trade union provided for an expiry date, but extended itself from year to year in the event that neither party provides notice to the other party. It was argued that section 57(2)(c), as a result of the language in the collective agreement and the fact that this was a termination application, had the result of preserving the original "open period".

The Board rejected the argument. Section 57(2)(c) preserves the original "open period" only if the operation of a collective agreement is extended by the *default of the parties*; it does not apply to a situation where the parties' normal ability to bargain has, in advance, been postponed by statute. The Board observed that it was in no position to "stretch" the meaning of section 57(2)(c), as requested by counsel, nor even if the Board could "stretch" its interpretation of the Act would it be desirable to do so in order to accommodate termination applications.

Finally, it was argued that Bill 179, to the extent it ousts the normal procedures set out in the *Labour Relations Act*, violates the freedom of association provision provided for in section 2(d) of the *Charter of Rights*. This argument was rejected in *Broadway Manor*, and the Board in this case reiterated the fact that the Act already places what have been considered to be necessary restraints on the right of access to changes in representation, particularly with respect to the timing of such access. In the Board's view, Bill 179's impact on these already-existing restrictions is not so fundamental as to bring the Act into conflict with the Charter.

The Board therefore dismissed the application for termination as untimely, since the application was filed before the "open period" as re-defined by Bill 179. *Salvation Army House of Concord*, [1983] OLRB Rep. July 1203.

### **Privately appointed receiver and debenture holders not successor employers**

In this successor rights case, the corporate owner of a nursing home ("the original owner") defaulted on a debenture held by one of its creditors ("the debenture holder"). As a result, a receiver and manager ("the receiver") was privately appointed to operate the original owner's business. A few days later the receiver was also appointed by the court as receiver and manager of the original owner's business. It was not until almost a year later that the nursing home business was sold to another corporation ("the new owner"). The applicant trade union had bargaining rights in respect of the original owner's nursing home, and the new owner voluntarily agreed to inherit its bargaining obligations as the successor employer. The trade union, however, further contended that both the receiver and the debenture holder were also successor employers bound by the original owner's bargaining obligations and collective agreement. The issue, therefore, was whether the receiver and the debenture holder of a defaulting owner can be considered successor employers of the owner pursuant to section 63 of the *Labour Relations Act*.

When the receiver was appointed on behalf of the debenture holder, the original owner's management was replaced. However, the original owner's board of directors continued to exist. The employees of the original owner were informed they would be paid but this was not a personal undertaking from the receiver. Once the necessary initial controls were in place, the receiver felt that the original owner did not require the full-time presence of anyone from the receiver's firm. At no time did title to any of the original owner's property vest in the debenture holder. None of the debenture holder's employees were present at the nursing home during the period of receivership. The debenture contained the usual provisions that in exercising any powers, the receiver shall act as the agent for the original owner.

In considering whether there had been a sale of a business under section 63 of the Act, the Board concluded that the consequences upon labour relations flowing from a court-appointed receiver are no different than those which result from the private appointment of a receiver. In either case, the same factors ought to be considered. Any distinction between the two types of receiver may be legitimate from a commercial law perspective, but not from a labour relations point of view.

The Board concluded that there had been no sale of a business from the original owner to the receiver or debenture holder pursuant to section 63. In the Board's view, the original owner remained the employer until the following year, when the new owner purchased the nursing home upon the approval of the court. At common law, the appointment of a receiver and manager does not result in the dissolution of a company. A receiver and manager derives no title or estate from the court order which appointed him. He is merely an officer of the court responsible for collecting and dealing with the business or property covered by the terms of his appointment on behalf of the creditors.

The original owner continued to exist, but its ability to conduct its business had been drastically curtailed by its contractual obligations with the debenture holder by virtue of the debenture. The debenture holder was merely involving the safeguards provided for in the debenture in order to protect its financial interests. In order for section 63 to apply, there must be a disposition of a business, but this did not occur until the nursing home was purchased by the new owner. The receiver merely acted in its capacity as receiver and manager; and the debenture holder merely was protecting its financial interests. The Board observed that none of the original owner's assets were transferred to the debenture holder until after the sale of the business to the new owner. At all times relevant to this application, the original owner continued to exist with its control over the nursing home license. The collective agreement continued to be honoured by the receiver but on the original owner's behalf.

The union also argued that the receiver and the debenture holder ought to be liable for the amount owing from a retroactive interest arbitration award released during the period of the receivership. The retroactive award was for \$100,000, and the receiver paid \$40,000 to the employees to represent the proportion of the award which accrued during the receivership. The union contended that the receiver and the debenture holder ought to be liable for the entire amount, since the two parties had benefited commercially from their respective position. The Board described the principle put forth by the union as the "well-lined pocket approach". The Board rejected this approach. While expressing sympathy with the employees seeking to receive back wages owing to them, the Board stated that it makes no sense to find liability in an entity merely because it benefited in commercial relations with the employer of the employees. While it may be true that a lender of money has benefited from the labours of the employees, it may also be true that the money supplied has helped to create jobs, financial expansion and supplied liquidity during problems



in cash flow and paid wages to the employees. There are clearly potential benefits on both sides of the relationship. The union's application against the receiver and debenture holder was therefore dismissed. *Price Waterhouse*, [1983] OLRB Rep. July 1184.

### **Board not rescinding collective agreement entered into on basis of mutual mistake**

The Minister of Labour sought the Board's opinion, pursuant to section 107 of the *Labour Relations Act*, as to whether he had the authority to appoint a conciliation officer to assist the parties in agreeing to a collective agreement. The issue was whether a collective agreement was already in existence between the employer and the trade union, thereby making the appointment of a conciliation officer untimely.

The parties had earlier agreed to a Memorandum of Settlement, subject only to ratification by the union membership. The Board found as a fact that the parties had honestly and sincerely misunderstood one another in what had been agreed to with respect to the inclusion of a Cost of Living Allowance (COLA) clause in the new collective agreement. The expired agreement contained such a clause. It was the practice of the parties in past negotiations to make special reference to expired clauses only if there was a proposal to amend the particular clause. As the COLA clause was not specifically repealed by the Memorandum of Settlement, the trade union argued that the clause remained in effect. On the other hand, the employer had made clear at the bargaining table that any COLA entitlement would have to be fought for by the union at negotiations. Despite this disagreement as to whether the Memorandum of Settlement contained full COLA entitlement for employees, the trade union proceeded to have its membership ratify the new collective agreement based upon the Memorandum. The employer purported to withdraw its offer upon which the Memorandum was based prior to the union ratification meeting.

The employer maintained that no collective agreement was in existence. The Board considered this argument in two ways. First, was there a mutual mistake that had the effect of rendering the new collective agreement void? Alternatively, did the employer's purported withdrawal of its offer prior to union ratification have the effect of a collective agreement never coming into existence?

On the first point, the Board considered the jurisprudence with respect to mutual mistake in some detail. "Mutual mistake" must be distinguished from "common mistake". In common mistake, both parties make the same error. They are fully aware of the intention of the other, but both are mistaken about some underlying and fundamental fact. In mutual mistake, the parties misunderstood each other and are at cross-purposes, as is the situation in this case. In such a situation, courts generally will not rescind a contract merely because a party understands the words to mean something different than they objectively connote. Rescission will only occur if the mistake of one party is known to the other party; if there is such ambiguity that a reasonable person could not draw any relevant inference concerning the terms of the contract which is alleged to have come into existence; or if the natural mistake goes to the heart of the entire contract or affects a matter that is fundamental to the contract as a whole.

The reluctance of the law to rescind contracts on grounds of mutual mistake is especially important in respect of collective agreements. Parties should not be able to resist the terms and conditions agreed to in difficult bargaining sessions merely because they misunderstood the words finally agreed upon. The intention of parties to a collective agreement must be considered objectively. So long as the parties have agreed to words which can be objectively interpreted, a contract is in existence. The doctrine of mutual mistake is a common law rule, while collective agreements exist pursuant to the *Labour Relations Act*. The Board, in adopting the words of an arbitrator,



concluded that the doctrine is inapplicable for that reason. The Act requires disputes as to interpretations of collective agreements to be resolved through arbitration, and not by rescission, which would re-open the right to strike and lock out. The Board therefore rejected the argument that the collective agreement was void due to the parties' mutual mistake.

The Board proceeded to consider whether the employer's withdrawal of its offer prior to union ratification meant that no collective agreement was in existence. Normally, the withdrawal of a written offer prior to union ratification would be a breach of the employer's duty to bargain in good faith. But in this case, the employer purported to withdraw its offer upon learning that the Memorandum of Settlement might not accurately reflect the terms of settlement which it reasonably contemplated. The Board therefore concluded that the withdrawal of the employer's offer was legitimate. As the offer was withdrawn, the ratification was ineffective. The Board held that no collective agreement was in operation. In the result, the Board concluded that the Minister of Labour had the authority to appoint a conciliation officer. *Sperry Vickers*, [1983] OLRB Rep. July 1208.

#### **Inferior check-off clause cannot be forced to impasse – bad faith bargaining found**

During negotiations for a first collective agreement, the union requested that the employer (which had been found in earlier proceedings to have contravened section 15 by refusing to bargain with the union concerning monetary items) provide information concerning its existing job classifications and wage rates. Despite the employer's illegal refusal to provide that information, the union, much to the surprise of the employer, accepted the employer's proposals relating to a number of contract items. Later that day, the union through the mediator, presented the employer with a comprehensive proposal, including the language which had previously been agreed upon by the parties. The employer responded by reneging on some of the agreed upon language and purporting to impose, as a condition precedent to entering into a collective agreement with the union, a requirement that the employer's final offer be presented to the union membership for ratification. The employer also proposed in its final offer a dues check-off provision which was less than that to which a union is entitled under section 43. After arranging to have the mediator deliver this final offer to the union, together with an announcement of the employer's intention to apply to the Minister for a section 40 final offer vote, the employer's representatives left the premises without giving the union any opportunity to discuss that offer with them, or to accept or otherwise respond to it.

The union subsequently complained to the Board, alleging that the employer's conduct was in contravention of sections 15, 43, and 89(7) of the Act. The employer requested the Minister to direct a final offer vote among the employees pursuant to section 40 of the Act. The union took the position that no vote should be conducted until its unfair labour practice complaint, which included an allegation that the request for a final offer vote was illegal, had been heard and decided by the Board. The employer on the other hand contended that the Board should await the outcome of the final offer vote before proceeding with the union's complaint and raised that, and other matters, as a basis for requesting an adjournment of the proceedings. The request was denied by the Board.

The Board held that while it may be permissible for an employer to propose a dues check-off provision less encompassing than that contemplated by section 43, that is not a matter that can be pressed to impasse. The Board held that by requesting a final offer vote on the exclusion of "part-timers" and "students" from the check-off clause, (notwithstanding their inclusion in the bargaining unit for which the union had been certified), the employer contravened section

15 of the Act. A violation of the duty to bargain in good faith was also found in the employer's reneging on earlier agreed upon language. While reneging on an earlier offer is not a *per se* violation, in the absence any explanation for the reneging in the particular circumstances, the Board found a violation. The Board noted that it is well established in Board jurisprudence that an employer cannot legally impose a condition that a proposal for a collective agreement be ratified by employees. The Board was satisfied on the facts that the employer had imposed that condition in order to avoid entering into a collective agreement, contrary to section 15 of the Act.

The Board also stated that while section 40 permits an employer to have its final offer voted upon by bargaining unit employees, that provision cannot be used as a means of avoiding the duty to bargain in good faith. Thus, the employer contravened that duty in requesting a final offer vote without giving the union an opportunity to discuss or accept the offer. By way of remedy, the Board directed, *inter alia*, that the employer prepare, execute and forward to the union a collective agreement embodying all of the language which had been agreed upon and all of the lawful proposals in the employer's final offer (which proposals the union had indicated to the Board were acceptable to it). In view of the Board's finding that the request for a final offer vote was itself, in the circumstances of this case, a contravention of the Act, the Board held that the employer was not entitled to have such a vote taken. *Northwest Merchants Ltd.* [1983] OLRB Rep. July 1138.

#### **Employer's unlawful conduct causes Board to direct new termination vote**

The employer had a unionized operation (North Queen) and a non-union operation (Hannah). The union succeeded in negotiating a first collective agreement at North Queen only after a bitter six month long strike. The agreement gave the employees at North Queen a 13% wage increase. Shortly thereafter, the employer gave its non-union employees at Hannah a 14% wage increase. The non-union workers were also granted a sick-pay plan which was vastly superior to that contained in the collective agreement. The employer hired some 100 "temporary employees" from an employment agency to do bargaining unit work at North Queen. Subsequent to the filing of a grievance by the union this practice was terminated and the union was compensated for unpaid union dues. Subsequent to the signing of the collective agreement the employer, rather than recall striking employees, continued the sub-contracting of unit work, a practice that had commenced during the strike. Further to an unfair labour practice complaint filed by the union, a settlement was reached whereby the employer agreed to cease contracting out and to recall the employees in the unit. However, the practice of contracting out was continued subsequent to the settlement. Prior to the date of the termination vote the employer transferred some 60 non-union employees from Hannah to North Queen. While they were working side-by-side with the unionized employees at North Queen, they continued to receive their non-union rates, which were higher than those received by the unionized employees. In negotiations for the renewal of the contract, the employer's best offer was an 8% increase to employees at North Queen, which would still have given the unionized employees a wage rate lower than that paid to non-union employees at Hannah.

On the foregoing facts, which were substantially undisputed, the union submitted that the employer had engaged in a deliberate pattern of discrimination calculated to convey the message that within the employer's operation, unionized employees would be financially penalized, while those who choose not to be unionized would be rewarded. It was contended that this affected the ability of employees to vote freely at the termination vote held, and that therefore the Board should not count nor rely on the ballots.

The Board stated that while there is no absolute requirement that an employer's union and non-union employees be treated equally, where no valid reasons are forthcoming to explain the

preferential treatment, the Board must look carefully at the whole of the evidence. Reviewing the evidence, the Board held that the facts established by the union caused the Board to draw an adverse inference against the employer, so as to require the employer to come forward with some explanation for its decision.

The Board concluded that the preferential treatment under the circumstances was unlawful and further that the proposal of a wage rate to its unionized employees, which was lower than that paid to its non-union employees, in the absence of any economic justification, constituted bad faith bargaining. The Board stated that the pattern of conduct of the employer “compellingly suggests anti-union motivation as the most probable explanation for its actions”. Dealing with the continuation of the contracting-out, the Board found that by continuing to contract out work, the employer had breached the settlement agreement and by extension violated the freeze provisions under section 79. The Board’s remedial order included a direction that the respondent employer table forthwith a wage offer which was not discriminatory towards employees, the terms of which were to be retroactive to compensate the discriminatory differential which was in effect from the time of the unlawful conduct. The employer was also required to cease and desist from transferring non-union employees from Hannah to North Queen, unless employees from both locations were paid equal rates or other rates consented to by the union. The Board directed that the ballots cast in the termination vote be destroyed and that the vote be reconducted. *Irwin Toy Limited* [1983] OLRB Rep. July 1064.

### **Employees entitled to make certain unfair labour practice complaints on their own**

A group of 16 employees filed a section 89 complaint against the respondent employer, alleging violations of sections 3, 64, 66, 70 and 80 of the *Labour Relations Act*. The complainants were all of the employees in a bargaining unit represented by a trade union. The trade union declined to file a complaint against the employer involving alleged unfair labour practices. The employees therefore proceeded to file their own complaint. Further, the applicant employees declined to file a concurrent complaint against their union alleging that the trade union had breached its duty of fair representation.

The respondent employer objected to the complaint on two preliminary points. First, the employer argued that individual employees did not have the status to bring such complaints. Without a concurrent complaint against the union, the employees had no right to bring a complaint against the employer. Second, it was submitted that the Board should defer to arbitration, since the essence of the complaint involved an alleged breach of the collective agreement.

The Board rejected both of the employer’s objections. On the issue of status of individual employees to bring complaints against their employer, the Board considered earlier Board jurisprudence. While a number of the provision in the *Labour Relations Act* (such as section 64) extend legal protection to trade union *per se*, section 66 of the Act provides protection to individual employees. Section 66(a) forbids discrimination against a “person” for trade union activities. Thus, while individual employees do not have status to bring complaints under provisions such as section 64, they may proceed with the complaint insofar as it pertains to section 66(a). The Board noted that nothing in the Act stipulates that a complaint alleging a breach of section 66(a) may only be brought by a trade union. If the bargaining unit in question was not represented by a trade union, the employees would presumably have status to bring a section 66(a) complaint; the existence of a certified bargaining agent should not make a difference, in the Board’s view.



The Board also rejected the contention that as a prerequisite to proceeding against the employer, the employees should be required to file a complaint against the trade union for failing to represent them fairly. The Board stated that the employees could have a number of legitimate reasons for not proceeding against the union. The employees may perceive their differences of opinion with the union as being an honest one, and may have concluded that the union had not breached its duty of fair representation to the extent required for a complaint to succeed. The Board should not encourage vexatious complaints. Requiring the employees to file a complaint against the union would run counter to the aims of the Act, as it would require an employee to proceed against his union simply and only to enforce his individual rights, established by the Act, vis-à-vis his employer.

Finally, the Board refused to defer to the arbitration process pursuant to the existing collective agreement. While the complainants maintained that the employer had violated the collective agreement, the essence of the employees' complaint was an alleged breach of the Act. The employees maintained that the employer was acting with anti-union animus and attempting to destroy the union through the manner in which it was assigned work. Further, the collective agreement does not contain a clause prohibiting discrimination against employees for union activity. In the result, the employees were permitted to proceed with the complaint. *Dufferin Aggregates*, [1983] OLRB Rep. July 1031.

### **Reverse onus not contrary to Charter of Rights**

In this section 89 unfair labour practice complaint, the respondent employer argued that section 89(5) of the *Labour Relations Act*, together with the administrative practices developed by the Board in relation thereto, was in conflict with sections 2(b), 7, 11(c) and (d) of the *Charter of Rights* and therefore invalid. The argument was made as a preliminary objection, by which the employer objected to being required to present its case first. The employer's constitutional argument was essentially two-fold. First, the employer argued that section 2(b) of the Charter guarantees "freedom of thought, belief, and opinion and expression", yet the Board considers whether an employer holds certain beliefs or expresses certain opinions in determining whether the act was contravened. Second, section 1(d) of the Charter provides the right "to be presumed innocent until proven guilty". The reverse onus provision in section 89(5) of the Act, it was argued, is in conflict with the Charter. In the employer's submission, the Board acts unconstitutionally in failing to require trade unions complaining under section 89 to prove a *prima facie* case. Requiring the employer to call evidence in the absence of a *prima facie* case runs contrary, it was argued, to the presumption of innocence provided for in the Charter.

In an oral decision, the Board rejected the constitutional challenge to section 89. The Board noted that the issue was decisively dealt with in the recent case of *The Constellation Hotel Corporation Ltd.* The Board briefly referred to the fact that the procedural requirement for the employer to proceed first was due to the fact that the employer is the party in most complete possession of the facts. The reverse onus rule is a matter of evidence and procedure and raises no presumption of guilt. The burden of proof on the employer is only triggered where there is no evidence before the Board or where the evidence before the Board is equally balanced. The Board stated that the employer's arguments concerning sections 2(b) and 7 of the Charter did not detract from its initial ruling. The employer, upon hearing the Board's oral decision, requested an adjournment so as to enable it to apply to the Courts pursuant to section 24(1) of the Charter. The request was denied. *Knob Hill Farms Limited*, [1983] OLRB Rep. July 1087.



## Non-wage aspects of hospital arbitration award valid in face of Inflation Restraint Act

The applicant trade union was certified as bargaining agent in November of 1981. Collective bargaining with respondent nursing home commenced, but the parties were unable to agree to a first collective agreement. In August of 1982 a board of arbitration was appointed pursuant to the *Hospital Labour Disputes Arbitration Act* ("HLDAA") to resolve all outstanding issues in dispute. In September of 1982 the *Inflation Restraint Act* ("I.R.A.") was given first reading in the Ontario Legislature. The arbitration board was scheduled to commence hearings in October in 1982. However, the nursing home requested an adjournment, in view of the possible passage of the I.R.A. The board of arbitration refused, and proceeded to hear the interest dispute. Repeated efforts were made to elicit the nursing home's participation, but without success. In November of 1982, the arbitration board's award came down. The *Inflation Restraint Act* was proclaimed on December 15, 1982, retroactive to September 21, 1982.

The nursing home refused to sign the collective agreement, which purported to cover the period from November 18, 1981 to November 17, 1983. Furthermore, the nursing home refused to abide by the terms of the award, resulting in a number of employee grievances. The nursing home failed to entertain the grievances, refusing to appoint a nominee to a grievance arbitration board.

The union asserted that the home violated the *Labour Relations Act*, by bargaining in bad faith (contrary to section 15,) and by refusing to abide by a binding collective agreement (contrary to section 50). The home contended that the provisions of the I.R.A. rendered the collective agreement a nullity. The issue was what effect the I.R.A. had on a first collective agreement awarded by an arbitration board prior to the passage of I.R.A. but within the period of its retrospective operation.

The award's period of application coincided with the years covered by the 9% and 5% maximum pay increases allowed by the I.R.A. The Board referred to the fact that although earlier Board decisions had considered the effect of the I.R.A., none had considered the I.R.A. in light of a first collective agreement. However, O. Reg. 57/83, passed pursuant to the I.R.A., makes clear that the 9% and 5% limits apply to first collective agreements. The award handed down by the arbitration board allowed wage increases exceeding 9% and 5% respectively. Wage levels – referred to as "compensation plans" in the I.R.A. – must comply with the 9% and 5% limits. The Board therefore concluded that the "compensation plan" contained in the arbitration award was not binding on the nursing home.

The next issue to consider was whether the non-wage provisions of the awarded collective agreement were binding. The Board held that these provisions were valid. Nothing in the I.R.A. or O. Reg. 57/83 operated to suspend the arbitration procedure set up in the HLDAA to achieve a first collective agreement. On the facts of the instant case, the arbitration board's procedures were underway prior to the enactment of the I.R.A., and it had jurisdiction to continue, even in the face of impending inflation restraint legislation. Section 16 of the I.R.A. speaks of the invalidity of compensation plans which do not comply with that statute. The fact that only "compensation plans", and not collective agreements in full, are invalidated shows that compensation plans are severable from the remaining provisions of a collective agreement. In light of these observations, the Board concluded that the collective agreement awarded by the arbitration board was valid, except for the compensation plan therein.

Based on this conclusion, the Board ordered the nursing home to abide by the collective agreement, save its compensation plan pursuant to section 50 of the *Labour Relations Act*. Since the collective agreement was in force, the duty of good faith bargaining was not an issue. *St. Raphael's Nursing Home*, [1980] OLRB Rep. Aug. 1370.

### **Union agreement to give preference to disabled employees not breach of fair representation duty**

The complainant employee alleged that his trade union violated its duty of fair representation, contrary to section 68 of the *Labour Relations Act*. The union and the employer had an arrangement for the past 25 years, whereby disabled employees would be given preferences for certain positions for which they were capable of filling, in order to avoid their unemployment. The arrangement was a deviation from the terms of the collective agreement, which required that promotions be awarded on the basis of an employee's seniority and ability. The complainant requested that the union file a policy grievance to oppose the arrangement. Reluctantly, the union filed the grievance, but after thorough discussion and with membership approval the grievance was dropped before the issue was brought to arbitration.

The Board rejected the contention that the trade union violated its duty of fair representation. The complainant's grievance was entertained, discussed and eventually dropped by the membership. There was nothing cursory, perfunctory or improper in the way that the grievance was handled.

The Board also concluded that the union's agreement with employer to waive suitable job openings in favour of disabled workers was not illegal. It was a perfectly reasonable and laudable effort to recognize and accommodate the needs of disadvantaged individuals. This preference for disabled workers was not the kind of invidious "discrimination" to which section 68 of the Act was directed. The Board noted that it might have been wiser for the employer and the union to have concluded a formal letter of understanding between themselves agreeing to assist disabled workers. But it was neither necessary nor even desirable, in the Board's view, to reduce every aspect of a collective bargaining relationship to writing. *Falconbridge Limited* [1983] OLRB Rep. Aug. 1303.

### **Uncomfortableness due to allergy condition not reasonable ground to refuse work**

The complainant argued that he was terminated by his employer contrary to the provision of the *Occupational Health and Safety Act*. Section 23(3) of that statute permits an employee to refuse to perform work "where he has reason to believe that ... [it] is likely to endanger himself ...". Section 24(1) of the statute forbids an employer from dismissing or disciplining an employee for carrying out his rights provided by the statute. Section 14(2)(g) imposed a duty on employers to "take every precaution reasonable in the circumstances for the protection of a worker."

The complainant was required by his employer to perform certain work. The complainant refused, because if he did the work he believed he would experience certain allergic "cold-like" symptoms. It was clear that although the complainant might have experienced these reactions, such allergic responses to the type of work required were unusual. The complainant once asked for a face mask, but received no response. He never pursued the request again, although he knew he was about to be terminated. Finally, because the complainant refused to carry out the work requested, his employment was terminated.

The Board was asked to consider whether, assuming all of the facts as alleged by the complainant were true, the complainant had made out a *prima facie* case. The Board concluded that the facts as alleged revealed no *prima facie* case. While the type of work which the complainant was required to do might have caused discomfort and inconvenience, this did not constitute “a danger”. Generally, the evidence showed that the work place did not present a health hazard; the complainant’s reactions were exceptional. Further, the Board noted that the complainant did little to pursue a means to put himself in a position to do the work in question. Since the complainant failed to bring himself within the provision of section 23(3) of the statute, his employment was not protected by section 24. He was lawfully discharged because he could not or would not perform his full range of duties.

Nor did the Board find a violation of section 14(2)(g) of the statute. Assuming that the Board had jurisdiction to consider such an alleged statutory violation, extensive investigations and reports from the Industrial Health and Safety Branch of the Ministry of Labour made clear that no safety hazards existed at the work place. The complaint was dismissed. *Wheeler Metal Products Ltd.*, [1983] OLRB Rep. Aug. 1386.

### **Onus of establishing voluntariness in a decertification petition not discharged**

The Board was dealing with a timely termination application which was supported by a petition signed by more than 45% of the employees in the bargaining unit. The Board referred to the Ontario Court of Appeal decision of *R v. K-Mart Canada Limited*, 82 CLLC 14, 1875, in which the intervener in the present case was fined \$100,000 following its conviction for a “sophisticated conspiracy” designed to deny bargaining unit employees the right to freely associate and organize in accordance with their rights under the *Labour Relations Act*. After quoting extensively from the decision, which set out the history of the intervener’s unlawful conduct in attempting to undermine the respondent’s attempt to represent the employees in the bargaining unit, the Board noted that after that decision, the intervener had been found to have breached sections 43, 64, 77 and 80 in various Board decisions. The Board indicated that while it is not appropriate to “visit the sins of an employer on its employees”, a pattern of pervasive and notorious breaches of the Act is a factor which cannot be over-looked if the Board is to realistically assess the voluntariness of a petition.

Examining the facts in light of this background, the Board found that the applicants were allowed to move freely during working hours to bolster support for the termination application and that the applicant’s activities in that regard could not have failed to have been viewed by other employees as having been engaged in with the approval of management. The Board further noted that some employees were led to believe that management was being made aware of their support for or opposition to the respondent. It was also shown that a security guard retained by the intervener was situated approximately 10 feet away from the plant gate where the employees’ cars were being stopped by the applicant for the purpose of obtaining their signatures on the petition.

Having regard to the history of the intervener’s unlawful conduct and circumstances surrounding the application, the Board was not satisfied that the signatures on the petition were obtained in a manner that “would permit employees to feel reasonably assured that management would not be made aware of which employees in the bargaining unit signed the petition and which of them did not.” Consequently the application was dismissed. *K-Mart Canada Limited* [1983] OLRB Rep. Aug. 1338.



### **Intimidation and coercion in conduct of union elections not established**

In this unfair labour practice complaint, the complainant was seeking to set aside the results of a union election for the position of business manager in which he was defeated by one of the co-respondents. The Board had earlier ruled that the only basis upon which it had jurisdiction to intervene was a violation of section 70. Evidence placed before the Board established that prior to the impugned election, the co-respondents had attempted to oust the complainant as business manager of the local charging that he had mismanaged union funds. Both of the individual co-respondents had sat on the trial board established under the local's constitution to hear the charge. The trial board imposed a fine and dismissed the complainant, but this decision was rolled back on intervention by the parent international. Subsequent internal political activity was characterized by "confusion and acrimony". The political atmosphere of the local became polarized into two distinct camps. Most members of the local were either supporters of the co-respondents or of the complainant. This confusion and ill-will crystallized in the eventual election battle that took place for the position of business manager between the complainant and one of the co-respondents. The complainant argued that the cumulative effect of incidents involving the respondents that took place up to and during the election, amounted to "intimidation and coercion" on the part of the respondents, and as such, represented a breach of section 70 of the *Labour Relations Act*. The events so alleged included, that on two separate occasions a co-respondent attempted to physically assault the complainant; that one of the co-respondents while chairing a membership meeting had a wrench in his desk drawer on stage; that supporters of the complainant were threatened with physical harm by supporters of the respondents at a membership meeting; that supporters of the complainant were threatened with loss of membership; and that at the time of the election, "watchers" (scrutineers) were not permitted to properly examine the counting of ballots by the election judges, all of whom were supporters of the co-respondents. The complainant alleged that the watchers were restrained in carrying out their function because they were intimidated.

The Board found no real attempt on the part of the respondents to assault the complainant, and in any event, that the alleged incidents were essentially unknown to the membership. Finally, and most importantly, there was no finding of intimidation of any of the "watchers" during the election.

In light of these findings, the Board found that the respondents did not interfere with the results of the election through intimidation or coercion. The Board emphasized that the *Labour Relations Act* was designed to regulate collective bargaining relationships and that it has no inherent supervisory jurisdiction over internal union affairs. The Board only has power to intervene in the internal affairs of trade unions in a section 70 complaint where "intimidation and coercion" have been established. "Intimidation and coercion" requires "actual physical or economic harm". The Board ruled that there was "no pattern of conduct" made out, which make it a reasonable likelihood that the watchers feared physical or economic harm if they disobeyed the directives of the judges. The complaint was dismissed. *Frank Manoni* [1983] OLRB Rep. Aug. 1344.

### **Voluntary agreement to expand existing bargaining unit – Onus under section 60 to show majority support**

The Board dealt with an application by a union to be certified as bargaining agent for employees working at a nursing home that opened in Etobicoke in the spring of 1983. The respondent employer operated a number of nursing homes in centres around Ontario. An intervention was filed by another union contending that it already represented the employees of the Etobicoke home. The intervener's



claim was based on an agreement entered into on April 22, 1983, whereby the respondent agreed to recognize the intervenor as the representative of the employees at the new home in exchange for wage concessions. Being a voluntary recognition agreement, it was subject to challenge under section 60. The Board reiterated that a union is not “entitled to represent the employees in the bargaining unit” unless a majority of them have demonstrated support for the union. The essential issue for the Board therefore, was to determine what unit was to be examined for the purposes of section 60. The choice was between one encompassing all of the employees who were covered by the master agreement between the intervenor and the respondent or one that would include only those employees who worked at the new home: i.e., the group added on.

The Board distinguished among the creation of bargaining rights by certification, a fresh voluntary recognition, and an agreement to expand on an existing unit. In both the certification process and in the creation of a fresh unit by voluntary recognition, all members are assured of an opportunity of participating in the selection of a bargaining agent. This could not be achieved in a situation where there is an agreement to expand an existing unit, and the potential new members are outnumbered by those in the old unit. The Board also noted that employees who gain bargaining rights by certification or by fresh voluntary recognition are protected against the excess of majoritarianism by the considerations of “community of interest and self-determination”, subject to a countervailing concern for consolidated bargaining structures. These safeguards are absent in the context of a recognition agreement that expands bargaining rights, if the “litmus test” is an overall majority.

The Board admitted that section 60(1) was designed for the “paradigm” fresh voluntary recognition and that it fits imperfectly to the situation in this case. However, given the fact that the processes of certification and fresh voluntary recognition involve varying degrees of employee participation, the Board felt that any ambiguity in the section should be resolved by ensuring employee participation. Therefore, the Board held that the word “bargaining unit” in section 60 must be read to mean that added on portion to an existing unit. Hence a voluntary recognition agreement is not valid unless a majority of the employees in the added on portion support the union.

The Board qualified this holding by stating that while an agreement to expand an existing unit will be struck down pursuant to section 60(1) of the Act if a majority of the present employees in the addition did not support it, the Board will nevertheless exercise its discretion under the section “to uphold an agreement entered into before there are any employees in an addition to an existing bargaining unit”. The reason for this distinction is that in the former situation the union comes to the employees, whereas in the latter the employees come to the union.

The Board then proceeded to apply this interpretation of section 60(1) to the facts at hand. It found that most of the employees had been hired on to the staff of the Etobicoke home before the agreement was executed. As such, they were deemed “present employees”. Therefore, since the onus that section 60(1) places on the intervenor had not been discharged, it was not entitled to represent the workers at the new Etobicoke location. *Bestview Holdings Ltd.* [1983] OLRB Rep. Aug. 1250.

### **The Relevancy of Employer motive in section 64 cases**

The complainant alleged that nine grievors dismissed during the course of a strike and whom the respondent refused to reinstate or to arbitrate their cases, were dealt with by the respondent contrary to the provisions of sections 3, 15, 64, 66 and 70 of the *Labour Relations Act*. Three of the grievors dismissed were members of the local executive. The dismissal of the grievors resulted

from an incident that occurred in the parking lot of a restaurant near the respondent's struck premises in which two individuals who were to serve the respondent as strike replacements were assaulted, and a van used to transport the replacements damaged. In examining the facts, the Board found that only three of the grievors had actually participated in the physical assault of the replacements. Three other grievors had been present, but did not take part in the assault. Another had caused damage to the vehicle used to transport the strike replacements. Allegations that this grievor had threatened one of the replacements with a knife were not substantiated by the evidence. Finally, it was in fact found that the remaining two grievors were not present at the restaurant at the time of the assault.

On these facts the Board was asked to rule upon three essential questions. Firstly, did the dismissal of the nine grievors without proper investigation of the level of culpability of the individual involved and the subsequent refusal to submit to arbitration amount to violations of unfair labour practice sections of the *Labour Relations Act* and in particular sections 64, 66 and 70? Secondly, did the refusal of the respondent to submit the grievors' dismissals to arbitration constitute an independent violation of the statute amounting to a refusal to recognize the trade union as the bargaining agent of the grievors? Finally, in refusing to discuss the termination of the grievors, and in particular the termination of those grievors who had not been present at the incident that gave rise to the terminations in question, did the respondent breach the duty to bargain in good faith?

With regard to the latter two issues, the Board ruled that the respondent's conduct in this instance did not result in a breach of the duty to bargain in good faith, nor did it constitute a failure to recognize the complainant. In reviewing the unfair labour practice of the case, the Board was compelled to comment on the inter-relationship among those sections that pertain to the employer's actions in dismissing and refusing to arbitrate the dismissals. Specifically, the Board examined the "motive" requirement of sections 64, 66 and 70. The Board noted that sections 66, and 70, by their wording suggest that a motive or intention to carry out the specific prohibited activity is required. Section 64 addresses the effect of the employer's conduct, and does not specifically address the question of intent or motive. The problem remained for the Board, therefore to determine whether the motive of the employer in dismissing the grievors is a relevant criterion in finding whether section 64 has been breached. To say that section 64 required no proof of motive, the Board stated, would be to effectively read sections 66 and 70 out of the Act, as complainants would then only file under section 64. On the other hand, section 64 could not possibly require the complainant to prove intention in its fullest sense, for to do so would make the section redundant and would undermine the Board's flexibility in dealing with employer practices, that, while not solely motivated by anti-union animus, serve nevertheless to interfere with the complainant's protected activities.

The Board reviewed its own jurisprudence on the question of motive and how it relates to section 64. In particular, it examined the different approaches to the subject taken in *A.A.S. Telecommunications*, and *Skyline Hotels*, respectively. The former decision stated that the distinction between section 64 and the more specific sections were based upon the fact that section 64 did not require the complainant to prove anti-union animus in order to find illegal interference. However, conduct that only incidentally affects a trade union is not to be viewed as interference. This qualification led to distinctions between "legitimate" and "illegitimate" management initiatives. The latter decision, on the other hand, implied in section 64 a motive requirement although motive need not be established by direct evidence where the employer conduct is such that it may be "presumed to have intended the consequences of his acts". If such conduct occurs, the employee must establish a "credible business purpose" to justify its actions. In looking at the employer's

justification, the Board would balance the injury to the interests of the complainant with this credible business purpose before inferring an improper motive.

The Board, while favouring the *Skyline* approach, expressed concern about limiting the flexibility that the legislature decreed in section 64. It therefor added that there are instances in which there could be no such inference of motive, but where there nevertheless may be a breach of that section. Those situations would be cases where an employer's sincere but mistaken belief led to the discharge of an employee who was participating in a protected activity. The Board found that situations such as occurred in this case, (where people were dismissed while participating in lawful picketing activities) whether undertaken in good faith or not, would clearly interfere with the rights of the complainant and would therefore be seen as a breach of section 64. The dismissal of the two employees who were not present at the assault would clearly fit into this category. The Board ruled that their dismissal and the employer's refusal to submit to arbitration violated not only section 64 but sections 66 and 70 as well, and as such, directed reinstatement of the employees with full compensation with interest.

With regard to the three grievors who were present at the scene but did not participate in the incident, the Board found that they remained within the realm of lawful strike activity. Given the protracted nature of this particular labour conflict, and the methods used by the employer to take strike replacements into the plant, the Board held that their activity was a lawful extension of the original picket line and thus subject to the protection of section 64 and section 66. Those grievors were ordered reinstated for the employer's breach of sections 64, 66 and 70, but they were denied compensation because of their refusal to testify at the Board hearing. The same result was found for the grievor who had damaged the vehicle. Compensation was withheld from this grievor because the Board felt it could not condone such activity. Also, his reinstatement was made subject to an arrangement whereby the grievor would pay for the property that was damaged. The Board held that the decision to dismiss the three grievors involved in the assault and the subsequent refusal to arbitrate those dismissals showed no anti-union animus and was appropriate under the circumstances. The unfair labour practice complaints that stemmed from those dismissals and all remaining aspects of the complaint were dismissed. *International Wallcoverings*, [1983] OLRB Rep. Aug. 1316.

### **Monetary compensation awarded for breach of duty of fair referral**

In an earlier decision, the Board found that the respondent trade union had violated its duty of fair referral to the complainant in a hiring hall situation, contrary to section 69 of the *Labour Relations Act*. The Board ordered that the complainant be compensated for his losses resulting from the union's violation of the Act. The parties, however, were unable to agree to an appropriate monetary sum as compensation. The Board was therefore required to determine the amount of compensation which the complainant was entitled to.

Before considering the issue of compensation, the Board was faced with a request from the complainant that the hearing be temporarily adjourned. The request was made on the second day of the compensation hearing, after the complainant dismissed his lawyer. The complainant claimed he needed time to retain and instruct a new lawyer. The union refused to consent to an adjournment.

The Board rejected the complainant's request for an adjournment. In doing so, the Board reiterated its general practice not to grant an adjournment unless it is agreed to by the parties, except in extraordinary circumstance. Extraordinary circumstances would generally include



unforeseen events beyond the control of a party, such as illness or difficulties in travel due to severe weather. The Board said that it does not generally adjourn a hearing on the request of a party for time to seek legal counsel, particularly where the party had ample notice of the hearing and a reasonable time to retain and instruct counsel beforehand. In the instant case, the complainant had nine days between his disagreement with his former counsel and the resumption of the compensation hearing. He had ample time to attempt to instruct and retain counsel. Having in mind the prejudice which an indefinite adjournment could have on the trade union by perpetuating a divisive issue, the Board determined that fairness to both parties and concern for the labour relations process required that the matter be disposed of without undue delay.

The Board proposed to consider the issue of compensation. The complainant argued that he was entitled to over \$40,000 in compensation. A large portion of this amount was calculated on the contention that his lower wage earnings in 1981, as a result of the section 69 violation, reduced the base calculation upon which his pension benefits were based. These pension benefits were granted to the complainant after the section 69 violation committed in 1981. The complainant contended that the lower base rate in 1981 caused by the breach, when extrapolated over a prospected 43 years of disability, would have the effect of reducing his pension benefits to the extent reflected in the \$40,000 figure.

The Board rejected the complainant's formula for compensation. First, the formula did not allow for the possibility that the complainant may have earned more in 1981 because of the length or nature of later hiring hall referrals which he did receive. Secondly, it was based on the assumption that he would live a certain number of years and would collect a pension for all of that time. But in the Board's view, the correct approach to that head of compensation would be to capitalize any projected loss to its present day value, by an actuarial calculation. Thirdly, it was not clear that the Worker's Compensation Board, which granted the complainant the pension did not assess the complainant's pension entitlement by reference to the average earnings of a person in his position, rather than by his actual earnings for 1981. Alternatively, it was open to the Workers' Compensation Board to recalculate the pension benefits in light of the finding that the complainant's 1981 earnings were diminished by the union's breaches of the *Labour Relations Act*.

The trade union contended that the complainant was entitled to no compensation. Essentially, the union argued that the complainant's losses should be based on the average earnings of some selected employees who did the work the complainant may have done had section 69 not been violated. The union then proceeded to deduct a number of sums from the total, such as unemployment insurance benefits received by the complainant.

The Board rejected the union's approach as well. In the Board's view, comparing the complainant to other union members on a selective basis leaves much uncertainty. Determining the amount that an employee would have earned, but for the wrongful application of fair hiring hall rules, is in the Board's opinion a speculative exercise at best. It cannot be said with any certainty that the complainant would have necessarily followed the pattern of employment for the entire year of any particular member referred ahead of him.

The Board noted that no formula can be absolutely certain, but was satisfied that the most just solution would be to determine the average earnings of the general membership of the union local, to compare them to the earnings of the complainant, and to make some allowance for his personal circumstances and his conduct, particularly any failure to mitigate losses.



The Board therefore determined the average earnings of the members of the local for 1981. From that figure the Board deducted the amount which the complainant actually earned in 1981. A further deduction was made to reflect the fact that the complainant quit another job he had in 1981, but failed to provide the Board with a proper explanation for quitting. Finally, the Board reduced the figure again, to reflect the fact that the complainant was disabled and therefore unavailable to work for a period of time during 1981. In total, the Board awarded the complainant \$4,341.86, and interest.

In determining the amount of compensation, the Board rejected the union's contention that the complainant's unemployment insurance benefits ought to be deducted from the calculated amount. Firstly, the Board could discern no evidence to determine the proportion of the amount received in unemployment insurance that was attributable to periods for which he would have been at work but for the union's violations of the *Labour Relations Act*. More importantly, the Board noted that to the extent that the compensation award would be in the nature of damages, and not for remuneration not paid to him, judicial authority would not support the abatement of the claim by the amount of unemployment insurance benefits received. *Joe Portiss* [1983] OLRB Rep. Sept. 1554.

#### **Purchaser of nursing home licence held to be successor employer**

The union brought a section 63 application contending that the respondent was a successor employer. The respondent had opened a 51 bed nursing home on Water Street in Peterborough, on land purchased from the previous employer. During the same month the predecessor employer's home of the same size closed on London Street. The Ministry of Health had authorized the sale of the licence from the predecessor employer to the respondent. The new home absorbed almost all of the residents from the home that closed down. The old home could no longer be utilized as a nursing home because it was unsafe.

The Board took a purposive approach to interpreting what constitutes a sale of a business within the section 63 definition. It noted that in a labour relations setting the words "sale" and "business" can have different meanings than in a commercial law context. The competing concerns section 63 is calculated to balance where set out:

- 1) the claim of the predecessor's employees to continue to be employed under the same terms and conditions of employment and to continue to be represented by their chosen bargaining agent,
- 2) the entrepreneurial freedom of both the predecessor and the successor employers, and
- 3) the interests of the successor's pre-existing work force, if any. Whether a transaction is properly labelled as a "sale of business" depends on a reconciliation of these competing concerns. The Board illustrated this point by extensive references to its earlier decisions. It observed, *inter alia*, that with rare exception, no sale of a business had been found where the predecessor retained all of its employees, and continued to apply an existing collective agreement because neither the predecessor's employees nor their bargaining agent were prejudiced by the alleged sale (*Canada Cement Lafarge*) but a sale was found where the assets and customers of a business passed from the predecessor to the purchaser, because the purchaser's interests of

entrepreneurial freedom were outweighed by the predecessor's employees' interest in continued employment where the nature of the work performed was unchanged. (*Dutch Boy Food Markets*).

Having discerned the key considerations applicable to a section 63 determination of a "sale of a business" in the private sector, the Board then considered the intervention of a government licence-granting body. Two earlier Board decisions dealing with successor rights in licence transfer situations, *Metropolitan Parking* and *Thunder Bay Ambulance*, were distinguished on the facts. The Board found itself driven back to the general language of the statute and the balance it strikes between competing interests. The role of the Ministry of Health was treated as irrelevant to the central issue, as it had merely acted as an agent or conduit facilitating the transaction. The salient facts were: 1) the successor had purchased the licence, the essence of the predecessor's business, and had acquired almost all of the predecessor's former residents 2) all of the predecessor's employees had been terminated, and 3) new employees had been hired by the successor. The respondent was held to be the successor employer. *Riverview Manor*, [1983] OLRB Rep. Sept. 1564.

### **Two-tier membership fee held not to invalidate membership evidence**

In this application for certification, the respondent employer made a number of submissions to the effect that the Board ought not to accept the membership evidence submitted by the applicant trade union. The employer alleged that the union, in its organizing campaign, suggested that a number of benefits would automatically follow in the event that employees become union members upon the conclusion of a collective agreement. The employer also expressed concern that while the union was charging a \$1.00 initiation fee during its organizing campaign, employees were told that the fee would rise to \$300.00 after certification.

On the allegation that the union promised employees unreasonable benefits for joining the union, the Board indicated that it would draw a line between "salesmanship" on the one hand, and improper conduct on the other. Improper conduct, the Board stated, involves fundamental misrepresentation, coercion and intimidation. In the instant case the employees were well aware that they were being asked to join a trade union, and that the benefits promised could only come about through bilateral negotiations. The line of misrepresentation, coercion or intimidation had not been crossed. The Board rejected this allegation.

The Board also considered whether the two-tiered fee structure which the employer alleged was instituted by the union was unacceptable. The Board, in all certification applications, requires trade unions to have each member employee pay at least \$1.00 in the form of an initiation fee. A trade union which normally has a higher initiation fee, but institutes a special fee to eliminate the financial impediment to organizing, acts properly if the special fee is not used as a threat of a penalty to those employees who would refrain from joining the union prior to certification. The proper question, the Board stated, is whether the employees wish to become part of the trade union or not. Any two-level system of initiation fees causes a problem for the Board so long as the higher level is made to apply before or immediately upon certification. An acceptable two-tiered system must allow all employees employed at the time of the organizing campaign a reasonable opportunity to join for the lower fee after it has been determined whether the union will be certified.

The facts of the instant case suggested that the union made quite clear that the lower initiation fee of \$1.00 would apply up until the signing of the first collective agreement. There was some confusion as to this amongst employees, and some rank-and-file employees communicated the

idea that the higher fee would go into effect immediately upon certification. But no union official ever contributed to this misunderstanding and the union could have been easily contacted for clarification.

Based on these facts, the Board determined that the union's membership evidence was acceptable. Because the membership evidence as submitted indicated that more than 55% of the employees in the bargaining unit were members of the union, a certificate issued to the applicant trade union. *Haughton Graphics Limited*, [1983] OLRB Rep. Sept. 1464

### **Employees returning to work after striking for over six months not having right to bump junior employees**

After a lawful strike had continued for more than six months the parties were able to resolve all their differences, the only dispute remaining being the right of the striking employees to bump more junior employees, who participated in the strike when it commenced but had returned to work within the six month period pursuant to section 73. The union claimed that returning employees with seniority had a right to bump more junior employees who had returned to work pursuant to section 73 and that the denial of this right by the employer constituted a contravention of sections 3, 15, 66(a) and 70 of the Act. The union characterized the employer's scheme of recall as amounting to a grant of "super-seniority" to employees who supported the employer by returning to work early and a punishment for those who continued to exercise their right to strike.

The Board, citing authorities holding that the employees returning to work after a strike had continued for more than six months had no right to their jobs vis-a-vis replacement employees, held that they could not be in any better position vis-a-vis those bargaining unit employees who had struck work but decided to end the strike and return to work. The Board concluded that "the situation in which striking employees found themselves at the conclusion of the strike was the incidental effect of having engaged in a lawful strike which they could not end on more preferable terms, and not the product of any discriminatory intent by their employer in violation of the *Labour Relations Act*". The Board went on to observe however, that "There is a very strong argument that any ... distinction between striking employees and those who continued to work, over and above the transitional recall problem disclosed in this case, should trigger a violation of the Act." The complaint was dismissed. *Mini Skool Ltd.*, [1983] OLRB Rep. Sept. 1514.

### **Failure to disclose plant-closure bad faith bargaining**

The union and the employer engaged in negotiations to renew a collective agreement and on January 13, 1983 agreed upon a memorandum of settlement, with neither party raising the subject of a possible plant closure. On March 1, 1983 the employer announced that it was permanently closing down the plant. The union filed a complaint alleging that had it been aware of the impending plant closure it would have taken a different approach to bargaining and that the failure on the part of the employer to disclose the closure constituted bad faith bargaining. The employer's position was that the corporate decision to close-down the plant was not taken until after the collective agreement had been concluded.

Noting the *Westinghouse* decision which had held that disclosure is necessary where a *de facto* decision exists, the Board stated that when a plant closure is announced "on the heels" of the signing of a collective agreement, a rebuttable presumption may arise that the decision-making was either sufficiently ripe during bargaining to have required disclosure or was intentionally delayed.



The Board stated “... the more fundamental the decision on the workplace, the less likely this Board should be willing to accept fine distinctions in timing between “proposals” and “decisions” at face value, particularly when strong confirmatory evidence that the decision-making was not manipulated is lacking”. The Board further stated that a strong argument can be made that the *de facto* decision doctrine should be expanded to include “highly probable decisions” or “effective recommendations” when so fundamental an issue as a plant closure is at stake.

Turning to the evidence before it, the Board stated that it found it difficult to accept that the employer would make such a major decision with a cost in excess of \$2 million so quickly and with such a minimum of formal analysis and documentation. The Board concluded that from all of the evidence before it, at the very least, a rebuttable presumption arose that the employer either manipulated the timing of the decision to avoid bargaining or withheld a *de facto* decision from the union. Given the magnitude of the decision and its timing, the Board drew an adverse inference from the employer’s failure to call as a witness the person who was responsible for making the recommendation to close the plant. In the circumstances, the employer failed to rebut the presumption and was found to have contravened the duty to bargain in good faith. On the issue of remedy, the Board rejected the request for back pay and a direction to bargain as having a propensity for over-compensation and therefore becoming punitive. Observing that a direction to re-open the plant was impractical and not justified in the circumstances, the Board instructed the Registrar to re-schedule the matter for a hearing on the remedial aspects. *Consolidated Bathurst Packaging Ltd.* [1983] OLRB Rep. Sept. 1411.

#### **Religious objection based on OFL resolution recognizing PLO too remote**

The applicant, a rabbi and a doctor of philosophy, sought exemption from the collective agreement’s requirement of paying dues to OPSEU on the basis that OPSEU, an affiliate of the OFL, did not publicly disassociate itself from an OFL resolution requesting the CLC to urge the Canadian Government to support the Middle East peace proposal based in part on recognition of the PLO and the pre-1967 boundaries. The applicant regarded the OFL resolution as a personal affront and an attack against his faith and his identity as a Jew. The Board concluded that the applicant, as a religious person, has given “a patently unreasonable religious interpretation to an event” and thereby asserted a personal feeling or political view point. The Board noted that the applicant’s objection was mainly on the basis, not of the contents of the resolution, but of the failure of OPSEU to publicly disassociate itself from it. In view of the evidence that OPSEU did not have a policy of its own on the Middle East issue and the fact that the OFL resolution was rejected by the CLC, the Board concluded that the applicant’s objections were too remote with respect to OPSEU to satisfy the Board that his objections were because of religious convictions. In dismissing the application the Board declined to follow the *Forer* decision, in which the Ontario Public Service Labour Relations Tribunal granted an exemption in similar circumstances. *Humber College re J.I. Schochet*, [1983] OLRB Rep. Sept. 1472.

#### **Petition not voluntary: Board reviewing extent of employer freedom of speech**

In this application for certification, the applicant trade union had sufficient membership evidence to warrant certification without a representation vote. However, a number of employee petitions opposing the union were submitted to the Board, indicating that some employees who originally joined the union may have had a change of heart. The petitions, if accepted by the Board, would have reduced union support such that a representation vote, rather than immediate certification, would have been required. The union, however, argued that the petitions were not



voluntary, and could therefore not be accepted as reliable evidence of employee desires. The union had three reasons for asserting that the petitions were involuntary. First, the union questioned the open circulation of the petitions during working hours. Second, the union referred to the fact that improved employment benefits were conferred on the employees by management in the course of the organizing campaign. Third, the union argued that the Board ought to be concerned with the speeches delivered by management to the employees. The union's allegations were asserted with a view to impugning the petitions and there was no allegation that the employer had committed on unfair labour practice. The Board noted that the onus of demonstrating that a petition is voluntary rests with those who rely upon it. The Board may reject a petition as involuntary even if there was no direct employer involvement. Rather, a petition may be reasonably perceived to be employer supported, even though it is not. Similarly, actions by petitioners which give rise to a reasonable perception of employer support can lead the Board to discount a petition. Based on these observations, the Board proceeded to consider the union's allegations.

First, was the petition openly circulated on the employer's premises during working hours? The evidence showed this to be the case. Consequently, a reasonable employee might conclude that management was aware of and tacitly supported the actions of the petitioners. In the Board's view, two facts supported this conclusion. First, the petitions activities occurred on the plant floor or in the cafeteria within the view of management. Second, these activities were carried on, at least to some degree, during working hours when the petitioners were generally subject to employer direction.

The second contention of the union was that the employer's alteration of some of the employment conditions, during the organizing campaign, also rendered the petition involuntary. The evidence indicated that the employer instituted a wage increase of thirty cents per hour on the same day that the organizing campaign commenced. However, this wage increase reflected a regular annual increase that was usually passed on to employees. Almost one month later, the employer further announced that it would be making significantly increased contributions toward employee public health insurance coverage. On the same date, employees were told that they would be given free garments, as part of a program in which customers and other employees throughout Canada would also benefit.

The Board stated that it was more concerned with the perception of employees than with the intention of management. Uncustomary generosity during an organizing drive could create an impression of intentional management interference in the campaign. On the facts, there was nothing unusual about the thirty cent wage increase, as it followed an annual pattern. But the health insurance contributions and free garments were unusual. A reasonable employee might have well thought that the work force was being offered a bribe to reject the union. One employee witness testified that he did not consider the improvements to be bribes, but the Board explained that it had to carefully consider the facts and to draw from them reasonable inferences about the reaction of the entire work force. In addition, the Board noted that employees may be reluctant to disclose, in the presence of their employer, perceptions which adversely affect management interests. For these reasons, the Board generally refuses to inquire into the subjective motivation of individual employees. The Board therefore concluded that the increased health insurance contributions, together with the free garments, rendered the petition involuntary.

Third, the union expressed concern about the speeches delivered by management to the employees. The Board carefully reviewed its own jurisprudence on this issue. Mere expression of opposition by an employer to unionization, during an organizing campaign, has been held not

to be an unfair labour practice (specifically, not contrary to section 64 of the *Labour Relations Act*). The Board has also upheld employer attempts to convince employees that any advantages of collective bargaining are outweighed by the drawbacks. Employers might discuss wages and benefits, on the one hand, and exclusivity and union security on the other. To this end, employers have been permitted to compare their wages and benefits to those prevailing elsewhere. The Board will also tolerate employer suggestions that collective bargaining could result in an end to dealings between the employer and individual employees. Employers may tell employees that collective agreements commonly make the payment of dues and union membership mandatory; that striking could be required of them by the union; and that certification of the union is possible without a representation vote. Even in the face of ambiguity, exaggeration and falsehood, the Board has been reluctant to strike down campaign propaganda, issued by either management or labour, relating to the subjects referred to above. The Board recognizes that campaigning is a political, and not a legal, process, and falsehoods can usually be regulated through the political process better than by legal intervention.

However, the Board warned that an employer raising the spectre of a loss of jobs increases a significant risk of running afoul of the law. Threats that an employer will react to collective bargaining by forcing job terminations are unacceptable. Predictions that collective bargaining could lead to lost jobs, made in the abstract during an organizing campaign, are also generally not tolerated. On the other hand, predictions which are carefully phrased on the basis of objective fact, and which might suggest a negative impact on jobs due to collective bargaining but completely beyond the control of the employer, might be acceptable.

Finally, the Board noted that not only the content of an employer's message, but the medium by which it is delivered, is relevant. The term captive audience has frequently been applied to meetings convened by management during working hours. Although the Board has refrained from holding a speech delivered at such a gathering to be a *per se* violation, the existence of a captive audience has often been relied upon, in conjunction with the speaker's comments, to find an unfair labour practice.

In the instant case, the union challenged the employer's speeches on three grounds. First, the employer referred to the fact that dues would become payable upon certification. The union argued that this constituted a misrepresentation about union security, because the employer implied that dues would become payable by all employees immediately upon certification. The Board disagreed with the union on this point. In the Board's view, the employer's remarks were substantially accurate.

The union was also concerned about the employer's references to layoffs and plant closings. In one of the speeches, the employer referred to its traditional absence of a union, and commented that "these factors combined have enabled us to weather the storm during the recent recession in better condition than many other employers. We have been able to avoid the same kinds of lay-offs and plant closures which have been experienced by many other companies." The Board concluded that employees might easily have understood the management to be saying that the absence of a union contributed to their continued employment in the past. They might also reasonably have thought that the employer was predicting that the certification of the union would lead to a loss of jobs in the future. The statement was made in the abstract, as it was not addressed to an industry-wide contract or to a union's wage proposals. On top of this, the Board noted the union's contention that the meeting at which these comments were made began during a coffee break and continued into working time; the audience was captive at least toward the end. The Board therefore held that in this setting, the remarks exerted an influence that coloured the petition.

For all of these reasons, the Board rejected the petition as involuntary. A certificate issued to the applicant union. *Vogue Brassiere Inc.*, [1983] OLRB Rep. Oct. 1737.

### **Suspension for refusing to work without safety equipment unlawful**

This complaint arose out of a three day suspension imposed on the complainant because he refused to enter and work inside a “lead pot” wearing only a small face mask and shield, instead of an “air-hat” (which completely covers an employee’s head and is equipped with a battery powered air pump and filter) which was usually required to be worn when entering the lead pot. The evidence was that the “air-hat” was being repaired for a defect at the time. The employer contended that the refusal to work was not motivated by health and safety concerns.

The evidence indicated that for several years there had been concern expressed, both by the employer and the Ministry, relating to the excessive exposure of employees of the employer to lead, resulting from improper work procedures and improper use of equipment by employees. The employer had taken several steps to minimize this hazard, including the introduction, in June 1982, of an “air-hat” to replace a small face mask, to be worn by anyone entering the lead pot. Several employees, including the complainant, were issued verbal and written warnings for not wearing the proper safety equipment when entering the lead pot. The employer posted a notice requiring the proper use of safety equipment and warned that breaches in this regard could result in discipline up to and including discharge.

The respondent employer, pointed to the instances in the past, where the complainant had breached safety procedures and contended that the complainant’s refusal was motivated not by a safety concern but by unjustified fear of being disciplined for not wearing the air hat. The Board, noting that the “obey now and grieve later” rule does not apply in relation to refusals coming within the protection of the *OHS*A, stated that the issue was not whether the work was in fact unsafe, but whether at the time of refusal the complainant had reasonable cause to believe that it was unsafe. The Board noted that since the safety infractions by the complainant, the employer had posted several notices demanding compliance with safety procedure and had disciplined employees for infractions. The Board concluded that these events would have led a reasonable employee to conclude that working in the lead pot without the air hat was unsafe. On the evidence, the Board concluded that the complainant had such reasonable cause to believe, and that it was his belief that caused him to refuse to do the work in question. The respondent was directed to compensate the complainant for the three days and to remove any reference to the suspension from the complainant’s personnel file. *Wilco Canada Inc.* [1983] OLRB Rep. Oct. 1759.

### **Reduction in work hours upon refusal of concessions unlawful lockout**

The Board recently dealt with two separate unfair labour practice complaints filed by the IBEW and the Labourers International Union respectively. In both the respondent was identical and the complaints arose out of the same employer action.

The respondent, a general contractor, was having a productivity problem with the major trade on site, the pipefitters. The respondent and the pipefitters agreed that the pipefitters would work four nine hour days at straight time, (rather than four eight hour days and four hours on Friday) and that the project would be shutdown on Fridays. Having obtained this agreement, the respondent notified the other trades that the site would be shutdown on Fridays and that these trades would henceforth work only four eight hour days, *unless* they agreed to work four nine hour days at straight time, as the pipefitters had agreed to do. This amounted to a reduction in



work hours, unless these trades agreed to waive their overtime entitlement under their respective collective agreements. The complainants' members reported for work on the next Friday, but found that the project had in fact been shutdown. The issue before the Board was whether this amounted to a "lock-out" within the meaning of the Act.

The Board noted that the act does not entitle an employer to withdraw employment opportunities during the life of a collective agreement simply for the purpose of improving on the deal contained in the collective agreement. While recognizing the positive benefits of an employer discussing in advance with the bargaining agent management decisions that will significantly bear on the employment opportunities of his employees, the Board stated that, given the strict prohibition in the Act against lockouts during the term of a collective agreement, the Board "must be scrupulous in its analysis of each case, lest a plea of 'economic circumstances' be used to mask an attempt simply to obtain better terms and conditions than have been agreed upon in the collective agreement." On the facts before it, the Board concluded that the respondent could not use the agreement with the pipefitters as justification to unilaterally close down the project site. The respondent's conduct was held to be an unlawful lockout in direct contravention of sections 72 and 75. The attempt to vary the rights under the provincial agreement was also held to be a contravention of section 146(2) of the Act. *C.E. Lummus Canada Ltd.* [1983] OLRB Rep. Sept. 1504, and [1983] OLRB Rep. Oct. 1688.

#### **Employer communications regarding concession package held not to be an unfair labour practice**

The Board heard a complaint under section 89 of the *Labour Relations Act* in which the complaint alleged that the respondent company contravened sections 64 and 67(1) of the Act. The respondent had approached three union locals of the (C.L.C.) Can Workers Union with proposals to enter into an "extension agreement". The effect of such an agreement would be an extension of the current agreement with only a few modifications. Similar agreements had already been entered into by the four major companies in the same industry in the United States and a competitor had reached such an agreement in Canada. The respondent felt that without such an agreement in Canada with its employees its own competitive position would be undermined. Two of the Locals entered into an extension agreement, but the third, the complainant, refused to even discuss the matter with the respondent.

The respondent appealed to members of the complainant by way of letter, outlining its precarious competitive position and urging them to encourage their elected union representatives to meet with the respondent to discuss an extension agreement. An outline of the proposals for the "extension agreement" was attached to that letter. Executives of the employer "toured" the plant and discussed the situation with some of the employees, including two union officials of the complainant. This was followed up with another letter to employees, outlining the employer's position and noting the complainant's continuing refusal to discuss the matter with management.

The Board found that while the complainant had appealed directly to the membership by way of conversations and letters, the substance of such communications indicated that the respondent continued to recognize the complainant as the exclusive bargaining agent of the employees at the plant. Accordingly, the Board found no violation of section 67(1) of the *Labour Relations Act*.

With respect to the section 64 complaint, the Board found that the impugned communications did not constitute coercion, intimidation, threats, promises or undue influence in the circumstances



of the case which involved a well-established collective bargaining relationship and a history of employer direct communications with employees to which the union had never previously objected. The Board therefore found that the respondent's conduct fell within the ambit of free speech guaranteed by section 64 of the Act.

The Board noted, however, that its decision should not be taken as meaning that direct communication by senior members of management with bargaining unit employees will not be closely scrutinized by the Board or that further communications regarding the lack of response by the complainant to company proposals would not take the respondent beyond the ambit of guaranteed free speech and into the realm of undue influence. *American Can Canada Inc.*, [1983] OLRB Rep. Oct. 1609.

### **Receiver not a successor employer**

The applicant union held bargaining rights for, and had entered into a collective agreement on behalf of, a group of employees of Romi Nursing Homes Ltd. Romi failed to make payments on a security interest charged in favour of a bank for a loan received. The Bank appointed Price Waterhouse as receiver/manager under the terms of the debenture. Price, acting as receiver/manager operated the Romi business as a going concern, while endeavouring to find a suitable purchaser for the business. The applicant claimed that the Bank and/or the receiver were successor employers, or in the alternative, related employers within the meaning of the *Labour Relations Act*.

The Board, held that on the appointment of a receiver/manager by private appointment, the receiver/manager managed the business for Romi, and that therefore, the applicant's bargaining rights were not extinguished as far as Romi was concerned. In fact, the evidence was that Price had honoured the terms of the agreement since its appointment. Since there had been no sale or disposition within the meaning of section 63, that aspect of the application was dismissed.

Noting that the related employer provision was not a proper means to collect Romi's uncollectable debts from its solvent creditor, the bank, the Board found that none of the prerequisites for the application of section 1(4) was present and that that aspect of the application was also dismissed. *Price Waterhouse Limited and CIBC*, [1983] OLRB Rep. Oct. 1706.

### **Extent of objectors' right to notice and participation in certification hearings**

This was a certification application in which there were disputes as to the employee list and the composition of the bargaining unit. In addition, certain objectors had filed a petition in opposition to the union. The Board concluded that the petition could not affect the outcome of the application however the other issues are resolved, because there was no overlap with membership evidence. The parties were advised orally that an officer would be appointed and that the parties including the objectors would receive notice in due course. The union objected to the continued status of the objectors, contending they have status only for the purpose of providing evidence on the validity of the petition. It was submitted that once it is decided that the petition is irrelevant they should not be accorded status in respect of any other issue in the proceedings.

The Board disagreed. The Board noted the many areas in which an individual employee's right may be affected by the issuance of a certificate and held that the rules of natural justice require that persons so affected be accorded the right to have notice and participate in the proceedings. The Board rejected the argument that a concerned employee's ability to offer himself

as a witness to one of the union or employer, was sufficient recognition of employee interests. The Board accordingly confirmed that the objectors would be given notice of further proceedings and accorded the opportunity to participate therein. *Tektron Equipment Corporation*, [1983] OLRB Rep. Nov. 1932.

### **Threat of plant closure and terminations – No vote directed despite voluntary petition**

This was a certification application in which the union had submitted sufficient membership evidence as would usually entitle it to certification without a vote. However, the Board also received a timely petition in opposition to the union, which the Board found to be voluntary and which had sufficient overlap to normally cast doubt as to whether the union had the continued support of more than 55% of the unit employees as would cause the Board to direct the taking of a representation vote.

The evidence disclosed that during the organizing campaign by the union there had been threats of plant closure and termination of employees and indeed the actual termination of a union supporter. In the face of this evidence, without making specific findings of violations of the Act on the part of either the petitioners or the employer, the Board concluded that the events in question had created an atmosphere in the workplace in which a vote is not likely to represent the true wishes of the employees. In the circumstances the Board concluded that this was not an appropriate case to apply the policy regarding petitions enunciated in *Baltimore Aircoil* and direct a vote. The union was certified on the basis of the membership evidence filed. *Ferrum Metal Mfg. Co.*, [1983] OLRB Rep. Nov. 1830.

### **Refusal to file discharge grievance found to be arbitrary**

This was an unfair labour practice complaint alleging that the respondent union had acted contrary to the duty of fair representation in the manner in which it handled the complainant's grievance against his indefinite lay-off, which was designed to permanently terminate his employment. The evidence was that from the time of his employment in August, 1980, the complainant had been a capable worker. Then his performance drastically deteriorated during the last two months prior to his discharge. He received several verbal warnings and was told that his job was in jeopardy. The employer also had a union official talk to the complainant and attempt to find out the cause of the problems, before deciding to discharge him. When the union representative learned the complainant was going to be discharged, he asked the employer, without consulting the complainant, to change the discharge to an indefinite lay-off. The union took the position that that was all it could do and that a grievance against the indefinite lay-off would not succeed because the complainant had received prior warnings and because no fellow employees would support him.

The Board found that the complainant did not accept the union's response and repeatedly sought to discuss the matter with the union. His numerous telephone calls and a letter were ignored by the union because, as the union explained, the matter had become a "non-priority". The Board found that the union had not asked the company for specifics of its complaint against the complainant's work. It did not ask the complainant for his side of the story and did not inquire into the complainant's allegation that a fellow employee was attempting to have him fired. The union questioned the complainant's fellow employees but never confronted the complainant for his comment, with the allegations the fellow employees had made against him. In deciding that a grievance would not be successful, the union had failed to consider the complainant's clean

employment record and the sudden deterioration of his performance. The arbitral principle of progressive discipline was not considered either. While section 68 does not guarantee the arbitration of a discharge grievance in every case, the Board stated that the section may be responsive to the seriousness of a disciplinary discharge.

The Board concluded that the union had declined to file a grievance of a discharged employee with no prior disciplinary record, on the basis of a superficial inquiry and without asking for the complainant's side of the story. The Board concluded that this conduct amount to arbitrariness in breach of the union's duty of fair representation. *Swing Stage Ltd.*, [1983] OLRB Rep. Nov. 1920.

### **Mass resignation by teachers found to be an unlawful strike**

The union and the employer were parties to a collective agreement with respect to the regular day school programme. For years, the union had unsuccessfully attempted to negotiate preferred access and wage parity for its members with respect to the employer's summer programmes. During the most recent round of negotiations, the employer had again denied the union's demands relating to the summer programmes. Consequently, the union issued a "pink letter" to all of its members, enjoining members from applying for or accepting teaching positions in the summer programme, and making it clear that those who had already accepted teaching positions in the summer programme were expected to resign. The union warned that those who failed to comply risked the imposition of sanctions. The union prepared a draft resignation letter, which was used by most of the teachers who subsequently tendered their resignations from the teaching positions they had accepted in the summer programme. On these facts, the employer complained that by this mass resignation, the teachers had engaged in an unlawful strike, which was actively encouraged, procured and supported by officials of the union.

The resignees argued *inter alia*, that at the time of their resignation there was no subsisting employment relationship with respect to the summer programme and that if there was an employment relationship, what had taken place was a series of individual "quits", rather than concerted activity. It was further submitted in the alternative, that the right to quit is the right of every employee, and even if undertaken in concert, cannot be considered to be a "strike" within the meaning of the Act.

Noting that the resignations came as a response to solicitation by the union, the Board found that there was concerted activity. The Board found that the resignations were not true "quits", since the resignees were willing to continue if the collective bargaining dispute could be resolved. There was no unconditional or irrevocable severance of the employment relationship. Rather, the whole purpose of the resignations was to put pressure on the employer to make concessions. While it was recognized that in common law there may be a distinction between a "contract of hiring" and a "contract of employment" the Board did not think that such common law distinctions should necessarily govern the interpretation of the *Labour Relations Act* and that the Board was required to interpret section 1(1)(o) to accommodate the statutory objective of promoting industrial peace. The Board found that the resignees were "employees" for purposes of section 1(1)(o). The ingredients for a "strike" being present, the Board found that the mass resignation was a strike. Since the union had not sought certification with respect to the summer programmes and since no resort had been had to the conciliation process, the strike was found to be both untimely and illegal. The Board further found that the union had breached section 74 by encouraging and supporting the unlawful strike. The complaint was dismissed as it related to certain individual officials of the union. *Board of Education for the Borough of Scarborough*, [1983] OLRB Rep. Nov. 1889.



### **Complaint not entertained because of extreme delay in filing**

The complainant in this case alleged that his trade union violated its duty of fair representation to him, contrary to section 68 of the *Labour Relations Act*. The trade union rejected the complainant's allegation, but also argued that the complaint was untimely due to the complainant's delay in filing. It urged the Board to exercise its discretion not to proceed with the complaint, pursuant to section 89(4) of the Act.

The complainant was terminated from his employment in October 1979. The trade union grieved the termination in December 1979 and in March of 1980, the grievance was referred to eventual arbitration. During the autumn of 1981, the union and the employer were involved in collective bargaining negotiations. It was the practice of the parties to resolve outstanding grievances during collective bargaining. The union initially refused to deal with the outstanding grievances after a lengthy strike, but eventually approximately 250 grievances were resolved, including the complainant's grievance. Some of these grievances were allowed, some were compromised, and some were withdrawn. The union attempted to pursue the complainant's grievance successfully, but the employer was unwilling to agree. After considering the merits of the grievance and the chances of success, the union withdrew the grievance in November of 1981. The complainant became aware of the withdrawal in February of 1982, but did not file the section 68 complaint with the Board until October of 1983.

The Board referred to its earlier jurisprudence on the question of delay. These cases recognize that time is of essence in labour relations. Claims under the *Labour Relations Act* ought to be asserted quickly and resolved expeditiously. Whether a delay will result in the Board refusing to hear a complaint depends on the circumstances of each case. In the past, the Board has considered such factors as the length of the delay and the reason for it; when the complainant first became aware of the alleged statutory violation; the nature of the remedy claimed and whether it involves retrospective financial liability or could impact upon the pattern of relationships which have developed since the alleged contravention, and whether the claim is of such nature that fading recollection, the unavailability of witnesses, the deterioration of evidence, or the disposal of records, would hamper a fair hearing of the issues in dispute. The Board will also accord some latitude to parties who are unaware of their statutory rights or, who through inexperience have taken some time to file a complaint. But there must be a limit, which should be measured in months rather than years. This approach, the Board noted, was approved by the Divisional Court in the *Sheller-Globe* decision (42 O.R. (2d) 73).

In the instant case, the Board found that there had been an extreme and unwarranted delay on the part of the complainant in filing his complaint. The delay of over a year and a half, together with the fact that the complaint sought a remedy, involving retrospective financial liability for the union and the employer, that the complainant's success could detrimentally harm the collective bargaining relationship between the union and the employer and that witnesses' recollections have faded and evidence has deteriorated, led the Board to exercise its discretion under section 89(4) of the Act, and to decline to consider the merits of the complaint.

The Board also commented that a trade union which ties grievance negotiations to the negotiation of a new collective agreement, in order to provide an underlying urgency for compromise and rational discussion, is not inherently unfair or arbitrary. The union had considered the merits of the grievance. There was no evidence that there was a trade-off against unrelated grievances or an exchange for a promise of value to other employees in the bargaining unit. The Board concluded that there



was no breach of the union's duty of fair representation, but that as the complainant's allegations were delayed in the extreme, the complaint could be dismissed on the ground of delay, as well. *Stelco Inc.*, [1983] OLRB Rep. Dec. 2102.

### **Union's failure to grieve in compliance with decision of International's orders not unfair representation**

Teamsters Local 230 represented the drivers employed by the employer in the Toronto area. Teamsters Local 879 represented drivers employed by other employers in the Hamilton area, including Oakville. The employer acquired a company in Oakville, and decided to integrate the dispatch systems in Toronto and Oakville, thereby requiring that the Oakville and Toronto seniority lists be integrated. Local 230 and its members were strongly opposed to this proposed integration, and the matter was adjudicated by the umbrella group for the area, Teamsters Joint Council No. 52. The Joint Council ordered the "dovetailing" of seniority, whereby the two seniority lists would be integrated such that the full seniority of the Local 879 drivers at the Oakville operation would be recognized. Local 230 was dissatisfied with this resolution, and appealed the decision to the International Union. A grievance against the employer was also filed, but the matter never proceeded to arbitration. Some Local 879 members were proceeding against Local 230 before the Labour Relations Board, and Local 230 decided that the issues ought to be resolved by the Board instead of an arbitrator. In the meantime, the International rejected Local 230's appeal, on the ground that the International Constitution forbids such appeals on collective bargaining matters. The president of Local 230 consulted counsel, and concluded that a court action against the International would fail. He concluded that he had no alternative but to advise the employer to dovetail the seniority lists. The Local 230 members then drafted grievances against the employer's move to dovetail the lists. The president of Local 230 refused to process the grievances, as he was advised by counsel that the Local – which advised the employer to dovetail – would be estopped from challenging such a move.

The issue was whether Local 230 violated its duty of fair representation, provided by section 68 of the *Labour Relations Act*, by refusing to proceed with the grievances of its members. The Board held that there was no violation of the Act. The Board viewed the issue in two ways. First, was the Local's adherence to the International's decision in itself a violation of section 68? And second, was the decision by the Joint Council in favour of dovetailing a statutory violation? The Board concluded, on the first point, that the decision to accept the International's authority was not a violation by the Local. The Board looked to the governing documents of the trade union, as there is a contractual element involved in the overall administration of a trade union. The Board noted that it would not interpret these governing documents, but would refer to them in determining whether the union acted arbitrary, discriminatory or in bad faith. In determining this, the Board must only satisfy itself that the union has in fact "turned its mind" to the problem in an honest and real way, as opposed to acting in a manner that appears arbitrary or in bad faith. A review of the relevant constitutional documents indicated that the Local's decision to comply with the International's ruling was not unreasonable. There was no doubt that the Local had made numerous efforts in its opposition to dovetailing, but without success.

The Board's second concern was whether the Joint Board's decision in favour of dovetailing was unreasonable. The American jurisprudence, the Board pointed out, indicates judicial reluctance to second guess a union's decision to "dovetail" or to "endtail" seniority lists. In the circumstances, there was nothing unreasonable in the decision to dovetail. *Dufferin Concrete Products*, [1983] OLRB Rep. Dec. 2014.

### **Board practice of “Full Board” meetings not breach of natural justice**

The respondent sought reconsideration of a Board decision on grounds, *inter alia*, that the Board had engaged in an improper and illegal practice in the course of rendering such decision by discussing the case at a “full-board” meeting. It was submitted that if, at this “full-board” meeting, the panel which heard the case had discussed any of the evidence it heard, or had solicited or received views or expressions of opinion from other members of the Board who did not hear the case, the Board had engaged in an improper and illegal practice and its decision cannot stand.

Reviewing its role and mandate under the *Labour Relations Act*, the Board noted that the Act confers upon it broad discretion in determining how the statute should be implemented. In an administrative tribunal such as the board, decision-making is greatly influenced by policy considerations. In essence, the Board’s legal and policy functions are inseparable, and are shaped on a case by case basis. The Board noted that to achieve consistency in advancing both law and policy, it requires all of the insight it can muster to evaluate the practical consequences of its decisions, for it lacks the capacity to ascertain by research and investigation just what impact its decisions may have on labour relations and the economy generally. Against these needs, the Board described the internal mechanisms it has developed of which full-board meetings are just one part. The Board specifically mentioned “weekly vice-chairmen’s” meetings and research services provided by the Board’s solicitors and law students.

Dealing with the impugned practice of “full-board” meetings, the Board noted that no minutes are kept and there is no attempt to achieve consensus by vote or otherwise. While policy considerations are reviewed by those in attendance, the facts of the case are taken as given by the panel and it is understood by everyone involved that the responsibility for the ultimate decision remains with the panel which heard the case. The Board felt that the respondent’s argument basically fell back upon attempting to probe the mental processes of decision-makers. The consultations undertaken by the hearing panel with fellow board members in reality are no different from informal consultations a judge may have with brother judges or law clerks in the course of rendering a judgment. The “full-board” meetings merely attempt to institutionalize these discussions and better emphasize for a panel, broad ranging policy implications of individual decisions. Noting that the respondent’s submissions ignored the institutional requirements of a modern administrative tribunal whose objective is to further harmonious relations between employers and employees, the Board concluded that the concept of natural justice, sensibly applied, did not demand more than the fairness accorded to the respondent. *Consolidated Bathurst Packaging Ltd.*, [1983] OLRB Rep. Dec. 1995.

### **Union’s failure to enforce seniority rights held to be arbitrary conduct**

The Board heard a complaint under section 89 of the *Labour Relations Act* alleging that the respondent dealt with the complainant in a manner contrary to section 68 in that the respondent had failed to recognize the complainant’s accumulated seniority and recall rights respectively as guaranteed by the collective agreement. The evidence showed that shortly after the complainant was recalled from a lay-off, she was asked to fill out a new application for employment. From the time of her recall she was treated as a probationary employee. The complainant was laid off three other times during 1982, and each time she was asked to fill out a new application for employment upon recall. She did so and asked the respondent union’s representatives whether this was proper, and she was informed that it was. At the time of her final lay-off, the complainant borrowed a copy of the collective agreement from a fellow worker. Her reading of the collective



agreement was that she had retained previously acquired seniority during the periods she was on lay-off, and should not have been treated as a probationary employee thereafter. She drew this to the attention of the President of the Local, who told her that she was wrong in her interpretation, as the retention of seniority for up to one year while on lay-off applied only to temporary lay-offs, not to permanent lay-offs. He said her lay-off had been a permanent lay-off. He cited the union's business agent as authority for the advice given, but refused to give the complainant the name and telephone number of the business agent. The collective agreement did not use the terms "temporary" or "permanent" in describing lay-offs. It was apparent that the local union president used these terms in the sense defined in Regulations under the *Employment Standards Act*.

The Board reviewed the facts in light of its own jurisprudence on the question of what constitutes arbitrary conduct, and also took into account arbitral authority dealing with individual rights in collectively negotiated seniority structure. In synthesizing these considerations the Board noted that seniority rights have a special importance to trade unions and often critical importance to the employees they represent, and that a trade union may not lightly compromise seniority rights to secure benefits for others. Accordingly, employees may fairly expect a trade union to resist any suggestion that the seniority rights they have won be abandoned, restricted or narrowly interpreted, particularly in the climate of uncertainty which prevails in hard times when lay-offs of significant numbers of employees have occurred or were projected. From this perspective, the Board examined the respondent's conduct. The Board found that the union's view as to the distinction between permanent and temporary layoffs was inconsistent with the wording of the collective agreement. The Board concluded that the union's official had not properly put his mind to the relevant considerations in advising the complainant. The Board held that just as with discharge cases, unions are required to give serious consideration to complaints dealing with denial of seniority rights. The Board held that in advising the complainant that she had lost her seniority rights before her rehiring and that there was nothing she could do about it, the union acted in arbitrary fashion contrary to section 68.

With respect to a remedy, the Board ordered the respondent to retain and instruct legal counsel approved by the complainant, to draft and present a grievance with sufficient scope to take in all the defaults which flowed from the company's first and subsequent failures to recognize the complainant's seniority. The Board made further provision for the ultimate arbitration of the grievance if the grievance was not resolved to the satisfaction of the complainant and for the posting of a Board notice of violation. *Savage Shoes*, [1983] OLRB Rep. Dec. 2067.

### **Incumbent's threats to expel members supporting raiding union held not to be unfair labour practice**

The respondent union, in the face of an organizing drive by the complainant union attempting to displace the respondent, had posted a notice on the union bulletin board indicating that anyone actively engaged in the distributing and signing of cards for the complainant was in violation of the respondent's by-laws and would be subject to charges. Following the posting of this notice, the complainant's previously well received displacement drive fell on deaf ears. The complainant argued that section 70 was violated because the purpose of the posting of the notice was to cause employees to fear that if they sign into membership in the complainant, they would jeopardize their continued employment.

The Board noted that the notice did not refer to possible loss of employment. Further, the Board noted section 46(2) of the Act gives the employees protection sufficient to remove the

possibility of a loss of employment for activities in support of the complainant. It was also noted that at the beginning of their campaign the complainant union had sent letters to all unionized employees informing them of their rights under section 46(2). The Board, therefore found that in the absence of sufficient evidence to support a finding that the notice was intended to or threatened employment, the threat of expulsion from membership of those who support the complainant, was clearly the message conveyed by the notice and was not a violation of section 70. The Board added that if such threats of expulsion from membership constituted intimidation or coercion within the meaning of section 70, the section 46(2) protections would not be necessary in the Act. *Energy and Chemical Workers Union, and United Cement, Lime, Gypsum and Allied Workers International Union*, [1983] OLRB Rep. Dec. 2125.

### **Second termination application within two months not entertained**

A group of employees applied to have the bargaining rights of the incumbent trade union terminated. Less than two months before, another application for termination of bargaining rights was filed by a group of employees, but that original application was dismissed by the Board just a few days before the second application was filed. In the meantime, the trade union and the employer were negotiating for a renewal of their collective agreement, although these negotiations had been temporarily suspended pending the first termination application. The union opposed this second termination application, citing section 103(2)(i) of the *Labour Relations Act*. That provision gives the Board the discretion to bar or refuse to entertain a new application within ten months of an unsuccessful application. A few matters were raised in opposition to the union's argument. First, it was contended that certain alleged violations of the union's duty of fair representation should lead the Board to exercise its discretion in favour of permitting the termination application to proceed. Second, it was submitted that section 103(2)(i) can be a bar to a second termination application only if the Board specifically imposed a bar when dismissing the first application. Third, it was argued that a refusal to entertain this second application would be a violation of the *Charter of Rights and Freedoms*.

The Board analyzed the jurisprudence concerning section 103(2)(i), and noted that it was designed to balance two conflicting policy objectives. The first is the freedom of employees to withdraw from the world of collective bargaining. The other goal is stability in employment relations. Both employers and employees have an interest in a measure of continuity in the process whereby terms and conditions of employment are determined. An application to terminate bargaining rights, successful or not, impairs the functioning of a collective bargaining relationship that was when created, and still may be, the choice of majority of employees. The Board noted that the *Labour Relations Act* limits the "open season" for termination applications. In the case of section 103(2)(i), the Board is delegated the discretion to restrict the open season, having regard to the conflicting policy objectives.

The Board noted that there was no recent election in the instant case to indicate employee opinion, and this factor tends to favour a less restrictive approach in exercising the section 103(2)(i) discretion. On the other hand, the employer and the union had never been given a proper opportunity to renegotiate a collective agreement. Another termination application would further impair the collective bargaining process. On balance, the Board concluded that it ought to refuse to entertain this second termination application.

The Board also rejected the contention that it ought to consider the application, in light of the union's alleged violation of its section 68 duty of fair representation. The Board noted that



a large part of the section 68 allegation involved employees who were not union members being excluded from the union's decision-making processes. Both the Ontario and B.C. Boards have in the past ruled that in certain circumstances, this is not improper. However, the Board refused to rule as to whether section 68 had in fact been violated, because the existence of a violation would not alter the outcome of the case. The Board is provided with sweeping remedial powers, by virtue of section 89, in dealing with section 68 violations, and that is the means by which section 68 rights ought to be vindicated.

Furthermore, the Board held that its discretion to refuse to entertain a termination application existed, even though the right to file a second application was not specifically barred by the Board's decision dismissing the first application. Section 103(2)(i), the Board observed, authorizes the Board to either "bar an unsuccessful applicant" prospectively when dismissing a first application or to "refuse to entertain a second application" when it is made.

Finally, the argument that the Board refusal to entertain the application constituted a denial of the employees' freedom of association, as guaranteed by the *Charter of Rights and Freedom*, was dismissed. In the Board's view, freedom of association does not entail the freedom to terminate a union's bargaining rights. But even if there was a *prima facie* violation of freedom of association, the Board's refusal to proceed would merely be implementing a limit prescribed by law that is demonstrably justified in a free and democratic society. *K-Mart Canada Limited*, [1983] OLRB Rep. Dec. 2039

### **Delay in filing – Board entertaining complaint in absence of evidence of prejudice**

The Board dealt with a union complaint alleging that the respondent employer had breached sections 3, 15, 64 and 66 of the *Labour Relations Act* by terminating a trade union activist following a picket line incident in June, 1982. The complaint was filed in September, 1983. The respondent made a preliminary motion for dismissal based on the delay in filing.

The Board reviewed the jurisprudence on the effect delay may have on the exercise of the Board's discretion under section 89(4) to inquire into a complaint. The Board noted that its jurisprudence and the arbitral and equitable doctrines of laches, while not co-extensive, have at their base a concern for unfairness to a respondent when delay causes prejudice. When a preliminary objection is made on the basis of delay, the Board must assess unfairness and prejudice in a context in which the complainant's allegations are assumed to be true.

Applying these principles to the case at hand, the Board noted that in the first four of the fifteen months between the discharge and filing of the complaint, the complainant sought to resolve the issue of the grievor's discharge during collective bargaining. The Board felt this was reasonable, and that the "delay clock" did not begin to run until the strike was settled in November 1982, without as the complainant alleged, resolving that issue. Thereafter the union sought to have the grievance arbitrated. The complainant's active efforts in this regard ceased only after the Legal Advisor to the Minister of Labour accepted the company's argument that the grievance was not arbitrable. With respect to the last five to six months of union activity prior to filing the complaint, there was no allegation that any witness or documentation had been lost by the respondent. In the result, the Board felt that there was no unfairness as would justify declining to hear the complaint. The Board left open the effect delay might have on any remedy, should the complaint be sustained. The Board also noted that the union's delay in ascribing anti-union animus to the employer's actions might be relevant to an assessment of the truth of the assertion. *John T. Hepburn Limited*, [1984] OLRB Rep. Jan. 39.

### **Allegations of coercion in soliciting union membership**

A petition had been filed in this certification application. Cards signed by those employees who had not also signed the petition would alone have been sufficient in number for outright certification. Nevertheless, the respondent company argued that the Board should take the petition into account in determining whether to exercise its discretion under section 7(2) to order a vote. Counsel challenged the Board's ordinary practice of regarding petitions as irrelevant in circumstances such as these. He also argued that the Board should conduct its own investigation into allegations of coercion, intimidation and no-sign pressed by the objectors for the first time after the count was announced.

The Board reviewed its approach to the discretion afforded by section 7(2). It reaffirmed the Board's usual test for "relevance" of signatures on a voluntary petition, holding that approach to be consistent with the scheme of the *Labour Relations Act*. The Board also reviewed its policy with respect to "no sign" allegations, holding that it would deal with them in the customary manner even when raised as they had in this case. The post-hearing investigation later revealed no basis for a formal inquiry.

The nature of each of the objectors' allegations of intimidation and coercion was considered. The Board found the facts alleged insufficient, even if proven true, to lead it to order a vote. It was therefore unnecessary to rule on their timeliness. The Board reaffirmed its position that it will not undertake an investigation on its own initiative, it being the obligation of the party alleging intimidation or coercion to investigate, give adequate notice of, and prove such allegations. *Unlimited Textures Co. Ltd.*, [1984] OLRB Rep. Jan. 138.

### **Discretion not abused – No violation of duty of fair referral**

This was a complaint alleging that the respondent union had contravened section 69 of the Act by failing to refer the complainant to certain jobs and by referring out-of-town members instead. The hiring hall in question was run by Ron Last, financial secretary and Business Manager of the local. He testified that when he took over, the system was riddled with abuses and did not operate efficiently or equitably. His attempts to correct this by formal classification of employee skills broke-down mainly because of non-co-operation of the members. Thereafter, in making referrals, Last relied upon his personal knowledge and investigation of members' skills.

In making an assignment he takes into account such factors as: whether the individuals have the required skills and abilities; whether they have expressed a preference for or against this type of assignment; the length of time they have been unemployed; whether their unemployment insurance benefits have expired; whether they are on welfare, or are suffering particular hardship by reason of family circumstance (age, illness, parental responsibilities, etc.); whether they have been able to find work or are working outside the trade; whether the job is short term or long term, whether further hirings are anticipated, and whether the individuals available have expressed any particular interest in or antipathy to the company making the request or the supervisors with whom they will have to work. Last testified that he tries to meet the employers' requests and distribute work in an equitable manner. Last pays special attention to the employees' past work record, if any, with the company making the request. A number of employees have established themselves with a particular company and go back year after year. In effect, they have steady employment with a seasonal layoff, cushioned by unemployment insurance benefits. Last makes an effort to maintain the continuity of these relationships and to reassemble the previous year's crew.

The practice of returning the same crew is of considerable advantage to employers and employees alike. The employers know that, by and large, they will be able to get back their core or key people who are known to be reliable and familiar with the company's equipment. Employees who have worked for a particular company over the years know they will return to familiar circumstances. In any event, to meet these employer and employee desires, Last determines which of the out-of-work members have worked for the company in the previous year and, in addition, whether they have worked for one or more years before that so as to have an established relationship with the company making the request. If they have, Last makes an effort to assemble the same crew as the company had in the previous painting season.

The Board recognized that in balancing all these factors, there is considerable latitude for discretion and the exercise of judgment on Last's part. The hiring hall was not operated on a "first in, first out" basis, and the union's by-laws formally authorized the exercise of the business agent's discretion. Nevertheless, the Board stated that neither the fact of discretion nor its exercise are, per se, illegal. The question is whether that discretion had been abused. On the evidence, the Board concluded that the factors considered by Last when he made the impugned referral were reasonable and that he was acting in good faith. In the circumstances the Board held that there had been no breach of section 69. *John Cooper*, [1984] OLRB Rep. Jan. 6.

#### **Effect of non-pay due to innocent mistake**

The evidence before the Board in this application for certification established that a collector for the union, who was not in charge of the organizing campaign had, through an innocent mistake, failed to collect a dollar from a person signing an application for membership. The issue was whether in the circumstances, the Board ought to reject only the one tainted card or all of the cards collected by the collector in question.

Reviewing past decisions dealing with non-pay in different circumstances, the Board distinguished between its approach in a situation where the rejection of all of the cards of the collector results in the direction of a representation vote as opposed to automatic certification and a situation where the result is outright dismissal as opposed to a vote. In the former situation, the Board will be more inclined to reject all of the cards and direct a vote. In the latter situation, the Board will be reluctant to reject all of the cards and dismiss the application, because any remaining doubts can be resolved by the direction of a vote. The case before the Board, fell into the latter category. This factor, combined with other circumstances such as that the mistake was an innocent one committed by a collector not in charge of the campaign caused the Board to reject only the tainted card and a representation vote was directed. *Frankel Steel Limited*, [1984] OLRB Rep. Jan 28.

#### **Employer's refusal to fire employees expelled from union membership not unlawful**

In 1982, the respondent was a participant in a form of coalition bargaining. In accordance with an agreement between the participating employers, when one employer was subjected to strike action, the other employers, including the respondent, locked out their employees. The evidence indicated that after the lockout, the respondents' employees engaged in picketing. On the day in question, three employees on picket duty, including the two interveners, were observed having, what the Board described as, "an entirely innocent conversation" with the President of the respondent company. Certain members of the union considered this conduct as a form of "strike breaking"



and filed charges under the union's constitution. No efforts were made to investigate or discuss the concerns with the interveners.

The interveners were put on trial two months after the alleged incident. The interveners wrote to the union denying any impropriety on their part but did not appear at the trial. The charges were upheld and each intervener was subjected to a three month suspension and a fine of \$50. This decision of the trial board having been confirmed at a membership meeting, the interveners were notified that if the fine was not paid they would face expulsion from the union. The interveners refused to pay the fine and after a further warning they were expelled from union membership and a demand was made of the employer that they be discharged.

The employer took the position that the terms of the collective agreement did not require him to discharge the interveners so long as their dues were properly deducted, and no demand had been made that the employer deduct the amounts of the fine from the interveners' wages. The union contended that the employer's refusal to discharge the grievors was an attempt to wilfully interfere with the internal affairs of the union and to subvert the union's constitutional requirements.

The Board stated that it did not have to conclusively determine the meaning of the provision in the collective agreement, a dispute relating to which should be resolved through arbitration. In order to dispose of the matter, it was sufficient for the board to be satisfied that the respondent's interpretation of the agreement was bona fide, arguably right and reasonable and not motivated by any intention to interfere with the internal affairs of the union. In these circumstances the Board held that no unfair labour practice had been made out. In the course of reaching its unanimous decision the Board stated that the characterization of the interveners' conduct as "strike-breaking" was "ridiculous" and noted that the union had done nothing to investigate the exact nature of the interveners' alleged misconduct before deciding to lay charges. The Board also commented that it was noting "the interesting process in which the functions of investigator, prosecutor, judge and jury are combined in one group of individuals." *Sumner Press*, [1984] OLRB Rep. Feb. 386

### **Union in breach of settlement of unfair representation complaint**

As part of a re-organization of hospital services in the Town of Hawkesbury, the General Hospital took over another publicly funded hospital known as the Smith Clinic. The local of the Canadian Union of Public Employees ("CUPE") that represented employees of Smith Clinic entered into an agreement with General Hospital that had the effect of putting former Smith Clinic employees at the bottom of the General Hospital seniority lists for purposes of promotion, lay-off and shift scheduling. Eighteen former Smith Clinic employees filed a complaint before the Board alleging inter alia that their former union local and the CUPE local representing them presently as employees of General Hospital, had breached the fair representation duty. This complaint was settled by the parties in writing. The instant complaint alleged that the said settlement had been violated by the union, contrary to s. 89(7).

The settlement contemplated that there would be two union meetings at which national representatives of CUPE would urge acceptance of integrated seniority and that a vote of the membership would follow. The evidence disclosed that two additional meetings were held prior to the vote by local union officials, who were all employees of General Hospital, at the home of an employee. Former employees of Smith Clinic were not invited to these meetings. When the vote was held the result was in opposition to integrated seniority.



The Board concluded that these meetings were union meetings and not social gatherings and that the effect of the meetings was to indicate to those present that the union executive opposed integrated seniority. Since the settlement envisaged only two meetings at which integrated seniority was to be recommended, the Board unanimously concluded that the settlement had been breached.

On the issue of remedy Vice-Chairman Springate was not prepared to simply impose integrated seniority. In this regard he was of the view that it was far from clear that integrated seniority would have been accepted had the vote proceeded in accordance with the agreed to minutes of settlement. Quite apart from the relative numbers involved, he felt it highly probable that if the two meetings in question had not been held, individual General Hospital employees would have lobbied against integrated seniority without in any way breaching the minutes of settlement. The Vice-Chairman was also concerned that to deem integrated seniority would impose a result upon a sizable number of General Hospital employees who were not involved in attempts to undermine the terms of settlement. Given these circumstances, he concluded that the most appropriate remedy was to set aside the settlement and allow the complainants to litigate their original complaint. However, the two Board Members, forming the majority on the remedial aspects, disagreed. They concluded that the remedy should be to direct the parties to conduct their affairs as if the vote had been in favour of integrated seniority. "In our view, it is appropriate that those who in bad faith sought to undermine the purpose of the vote end up with the very result they sought to avoid," they wrote. *Hawkesbury & District General Hospital*, [1984] OLRB Rep. Feb. 259.

#### **Application for religious exemption based on union's pro-abortion stand premature**

The applicant, a teaching master at Georgian College applied for an exemption from paying certain dues to OPSEU under section 53 of the *Colleges Collective Bargaining Act*. His application was prompted by the formal pro-abortion stand adopted by his union. His concerns began when OPSEU published an article which he felt took a pro-abortion stand, in the union's newsletter. The article also noted that the OPSEU caucus at the OFL's annual convention in 1982 had voted in favour of a pro-abortion resolution. The applicant also opposed the debating and adoption of pro-abortion resolution at OPSEU's own convention, which in essence resolved that three columns be prepared for publication in the OPSEU News to "explain the problems women face in obtaining a safe, legal abortion; and the reasons why it is important for the trade union movement to take a public stand on this issue."

The applicant took the position that he was opposed to the union dealing with the issue of abortion at all. However, he conceded that the "freedoms" of other union members entitle them to use the union newsletter as a forum for discussion, so long as the newsletter is not used to promote one point of view over another. He was able to reconcile his religious beliefs with everything except the actual expenditure of funds on pro-abortion activities. Therefore, the applicant limited his claim for exemption only to that portion of his dues, however minor, fairly attributable to pro-abortion expenditures. He submitted however, that if such apportionment is not possible, he had no option but to seek a total exemption.

OPSEU, while conceding that this particular applicant's beliefs were "religious", contended that the application must fail because an exemption was available not to those opposed to a particular union, but only to those opposed to trade unions in general. The Board, examining the statutory language and its prior decisions, rejected this argument. The Board also stated that there is nothing in the section, or the Board's jurisprudence, to suggest that an applicant's objections must extend to all activities of a trade union.

On the merits, the Board held that the convention expenditures attributable to the debate on the “abortion” resolution fell within the area of freedom of speech, which the applicant had conceded. Thus, only the last part of the resolution authorizing the expenditure of funds for preparation of three pro-abortion articles remained to be considered. The evidence in this regard was that neither time nor funds had yet been expended on the proposed articles, and that in fact no decision had yet been made on the form which the articles would take. Therefore, the Board found that the application before it was premature. It was dismissed without prejudice to the applicant’s right to re-file should further developments warrant it. *Georgian College of Applied Arts and Technology*, [1984] OLRB Rep. Feb. 247.

### **Refusal to grieve mandatory referral of employee to alcohol rehabilitation program not unfair representation**

The union and the employer operated jointly a program for dealing with unsatisfactory work performance in which alcohol and drug abuse are factors. Employees may request to go on the program (a voluntary referral) or may be given a mandatory referral. A mandatory referral was considered as an alternative to disciplining of an employee whose work performance was found to be unsatisfactory due to alcoholism or drug abuse. The program was an attempt by the union and the employer to treat alcohol and drug abuse as a health problem and to remove these from the mainstream of discipline. The employer had agreed to inform the union in writing prior to making a mandatory referral of the reasons for it and to keep the union fully informed of each step subsequently taken in the program. Thus the union was able to grieve if it disagreed with the appropriateness of a mandatory referral and if the employer failed to properly apply the steps of the program. In return, the union undertook that it will not grieve on behalf of an employee who has been given a mandatory referral or has been disciplined or discharged for failing to follow the program after a mandatory referral, so long as the employer has applied properly the steps of the program. An employee whose termination was not grieved by the union because of its policy decision alleged that the union had breached its duty of fair representation.

The Board held that if the policy resulted in different treatment of employees disciplined for unsatisfactory performance depending on whether alcohol was a factor, there are cogent labour relations reasons for the difference. The union considered the program to be of general benefit for bargaining unit employees in that alcohol and drug problems were treated as a disease rather than matters for immediate discipline. The union, along with the employer accepted the expert advice that for the program to be successful, the employees must believe their referral to be a “last chance” to correct the problem. Filing of grievances for employees who were disciplined for refusing or failing to comply with the terms of the referral would be inconsistent with that concept. The Board was satisfied that, when making the policy decision, the union sought to balance the value of the program to all unit employees and the need to enhance its effectiveness for the employees who would be referred to it by supporting the constructive coercion concept on which it operates. Therefore, the Board held the union did not breach section 68 when it made the policy decision.

The Board also found no breach in the application of the policy to the complainant’s termination. While the union had failed to communicate to the complainant the policy reason for not grieving, that defect was cured subsequently. The Board expressed concern that the proper procedures with respect to employees given mandatory referrals had not been followed by the union. By not confirming the alleged unsatisfactory work performance infractions and by not talking to the complainant, the union ran the risk of depriving itself of relevant information. Concern

was also expressed that the complainant was not informed that the union would not file grievance if he failed or refused to comply with the terms of the program. However, the Board concluded that these failures did not make any difference in this case because the union would not have discovered anything which reasonably would have caused it to alter its decision not to grieve. Consequently the complaint was dismissed. *Ontario Hydro, re CUPE Local 1000 and Leo McMullen*, [1984] OLRB Rep. Feb. 323.

### **Whether employees deemed to be actually at work on application date**

The union and the employer party to this certification application were in dispute as to whether or not four persons were to be counted as employees for the purpose of measuring the union's degree of support within the bargaining unit. Employees A and B worked on the application date for a very brief period before being laid-off. C arrived at work on the application date, but before reaching his work station, was advised that he was indefinitely laid-off. D was scheduled to work on the application date but called in sick. He was asked to come in and speak to the manager and when he did, was advised that he was indefinitely laid-off.

The Board held that A and B should be included in schedule A since they worked on the application date, even though for a brief period. C was also placed on schedule A in accordance with established Board policy that a person scheduled to work, who arrives at work expecting to work is counted even though he is laid-off without any work being performed by him. The Board, facing D's circumstances for the first time, stated that labour law policy must be balanced with administrative concerns. Applying this principle, the Board concluded that a person scheduled to work, but who does not perform any work due to illness, should be placed in schedule D, even though he visited the workplace on the day in question. *Holiday Juice Ltd.*, [1984] OLRB Rep. Feb. 277.

### **Failure to disclose plant closure: Damages computed by the Board**

In a decision dated September 30, 1983 the Board found that the company had contravened its duty to bargain in good faith by failing to disclose a plant closure during negotiations. The parties having failed to agree upon appropriate remedies, further hearings were held in this regard and a decision dealing with the remedial aspects issued.

Reviewing the pattern of bargaining between the parties and the facts surrounding the particular set of negotiations in question, the Board concluded that, had the company disclosed the intended closure, the union would have achieved some greater relief for the affected employees than was contained in the agreement actually negotiated. The Board felt that the union's focus would have been on improved severance pay and priority in hiring. While the union may have sought severance pay equal to what was paid to salaried employees, the Board concluded that the company would not have, for various reasons, acceded to such a demand. The Board concluded the loss of each grievor to be 25% of the difference between what the grievor received on severance and what was paid to a salaried employee. The Board also concluded that the union would have achieved some form of access to new jobs at the company's other Ontario locations, for the affected Hamilton employees. Thus the Board directed that, subject to the prior recall rights of employees at other locations on lay-off, the company offer new positions at its other Ontario plants to those grievors who refrain from immediately taking the severance payment directed by the Board in order of seniority. This direction was to be in effect for a period of one year from the date of the decision. On the acceptance of a job at another plant, a grievor was to be accorded a three month training



period. If a grievor is unable to perform the job at the end of the training period, he may be terminated and paid the severance entitlement under the decision. Further if a grievor, who accepts a new job at another location, is terminated within one year of hiring for a reason other than his own conduct, he must be paid his severance benefits as calculated by the Board's decision. If any grievor who registers himself does not find employment at another Ontario plant of the company within one year, he must be paid his severance entitlement. Seniority can be carried to the new location only for purposes of benefit entitlement but not for competition with employees of those locations. At any time during the one year period, a grievor may waive his claim to priority of hiring and elect to take the severance benefits.

*Consolidated Bathurst Packaging Ltd.*, [1984] OLRB Rep. Mar. 422.

### **Union officials holding key positions with employer: Certification prohibited by s.13**

The Seafarers' International Union of Canada sought bargaining rights with respect to certain employees of the Seafarers' Training Institute, a non-profit corporation formed for the purpose of operating a school for the training of seamen. The President of the union, Mr. Roman Gralewicz, was also the President of the employer. The area Vice-President and the Secretary-Treasurer of the union also served on the employer's Board of Directors. It was the Secretary-Treasurer of the union who signed the Form 9 and his son was the collector of the cards filed in support of the application for certification. The individual who filed the certification application and who testified that he would be directly responsible for negotiating, reported to and was under the authority of Mr. Gralewicz.

The Board, emphasizing the need for an arm's length relationship between "two sides" for collective bargaining and citing several provisions of the Act which recognize this need, held that granting a certificate in the circumstances would be contrary to s.13. The application was dismissed. *Seafarers' Training Institute*, [1984] OLRB Rep. Mar. 518.

### **Merger of unions upheld by Board**

The Board dealt with an application under s.62 by the UFCW, wherein it claimed that it was the successor of Kraus Carpet Employees Association by reason of a merger with the latter. The employers contended that there was no valid merger. It argued, reference being made to *Astgen v. Smith*, that the association needed unanimous authorization to merge. In the alternative, it was contended that the procedures taken to effect the merger were inadequate in that in a single vote, the constitution of the association was amended to permit a merger and the merger was approved by the membership. It was argued that the amendment of the constitution to permit a merger and approval of the merger itself are two different things, which cannot be combined in a single vote.

Examining the nature and functions of a modern trade union, the Board held that, while at common law a trade union may still be only a voluntary association, under the *Labour Relations Act*, it is more than that. Under the Act and its definition, the collective bargaining purpose was the critical requirement of a trade union. While the constitution was not irrelevant, it did not have the central role as it did at common law. Turning to the Association's constitution, the Board found nothing in it to prevent a merger. The only relevant constitutional provision was the one respecting amendments. Neither its terms nor the association's past practice nor the evidence before the Board suggested that the provision must be limited so as to exclude an amendment to permit a merger. The *Labour Relations Act* does not suggest that one should infer or read into a union



constitution some unstated but fundamental objects which limit the union's freedom of action. The Board stated that it could see no industrial relations policy why the association in this case should be saddled with the requirement of unanimity, which its members have not undertaken and which would frustrate the wishes of a significant majority.

Turning to the issue of the adequacy of the procedure followed, the Board concluded that the association had given its members ample notice of the upcoming meeting. Given the unprecedented interest and debate generated by the merger issue, (the employees also participated in the debate) the Board had no doubt that the members knew precisely what they were voting for or against, namely, a merger with the UFCW. Under the circumstances, the Board was satisfied that the vote to merge with UFCW reflected the considered opinion of 2/3 of those who cast ballots and more than a majority of the association's total membership. The vote on the constitutional amendment and merger was explained to the members and regarded as a single process and there was no evidence of any confusion. While stating that it would have been wiser to separate the constitutional amendment and merger issues, the Board could find nothing in the constitution of the association that prevented these two related issues being dealt together, nor could the Board find the slightest suggestion that had the issues been separated the result would have been any different. On the totality of the evidence the Board declared that it was satisfied that UFCW had acquired the rights, privileges and obligations under the Act of the association. *Waterloo Spinning Mills Ltd., etc.*, [1984] OLRB Rep. Mar. 542.

#### **Full disclosure made during negotiations — Contracting out not unlawful**

The employer, who already operated four apartment buildings in Metro-Toronto purchased two other adjacent apartment buildings on Balliol Street, Toronto, in June 1983. A new general manager was hired, and some two months before the filing of the application for certification and well before the advent of the union, the employees at these newly acquired buildings were notified that the operation was under review and that no one's job was guaranteed. The manager was instructed to explore the feasibility of contracting out cleaning and maintenance work as a cost cutting device. In September, 1983, the union was certified and notice to bargain given. Initial bargaining began in November when the union tabled its proposals and a further meeting was set for mid-January.

In the meantime, the employer received quotations from outside contractors, which represented significant savings from the existing costs for cleaning and maintenance. In December, by letter, the employer notified the union of its decision to contract out cleaning and maintenance. This decision did not affect the resident superintendents at the two buildings who fall within the bargaining unit. The union did not respond to this letter. When, at a subsequent negotiation meeting, the employer reiterated its decision to contract out, the union walked out and the instant complaint was filed alleging bad faith bargaining and contracting out for anti-union reasons.

The union argued that the employer was obliged to fully discuss its decision to contract out, which it failed to do. It was further alleged that the employer had misled it by including a wage rate for cleaners in its proposal. The union contended that from these facts, the Board should infer that the contract out was motivated by anti-union considerations. Having regard to the timing of its decision to review its operation, to the bona fides of that review and to the cost savings accruing to it, the Board was satisfied that the decision to contract out was not made for anti-union reasons.

On the allegation of bad faith bargaining, the Board held that the union's letter of December satisfied the requirement to disclose and that in the face of such notice, the tabling of wage rates for cleaners could not be seen as an attempt to mislead. The Board contrasted this case with *Westinghouse* and *Sunnycrest Nursing Homes*, where the employer had failed to disclose its intentions. "It was incumbent upon the union to seek clarification of that notice, if clarification was required, and to fashion an appropriate bargaining response to deal with it" the Board said. The Board noted that the company was prepared to bargain and to conclude a collective agreement on the basis of the terms that were being discussed and that negotiations terminated when the union walked out after being informed that the employer stood firm in its decision to contract out. In the circumstances the Board found no breach of the bargaining duty by the employer. *Curtis Property Management Ltd.*, [1984] OLRB Rep. Mar. 443.

### **Union seeking craft unit failing "commonly bargain separately and apart" test**

The IBEW, Local 1687, applied for bargaining rights of a group of maintenance electricians employed by a mining company in Timmins and relied on the provision for craft units in section 6(3). The Board analysed section 6(3) as follows:

There are three conditions which a union must meet in order to bring itself within the craft unit provisions of section 6(3):

1. The group of employees whom the applicant seeks to represent must be employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from other employees;
2. The group of employees must commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts;
3. The application must be made by a trade union which pertains to such skills or craft.

If those conditions are met, the Board is required to find the craft unit to be appropriate. Section 6(3) is mandatory.

The Board went on to state:

"An examination of the statutory language indicates that it has been carefully drafted to preserve the status quo. It is a recognition of historical organizing patterns, rather than any general endorsement of craft bargaining unit. Those historical criteria are built right into the section itself, and must be satisfied before it has any application. Section 6(3) is available only *if* the group of employees whom the union seeks to represent *already commonly* bargain separately and apart from other employees; and only *if* the applicant trade union has traditionally represented employees with those skills. Both conditions require the Board to look to the collective bargaining system for historical precedent to establish that the separate bargaining is already "common", and that the union's representation of these employees is in accordance with "established practice". These conditions effectively preclude the development of new craft unions and, in our view, limit the extension of craft bargaining patterns beyond their traditional boundaries. It is also interesting to note that even if these criteria are met, the section need not

be applied where the union seeks to “carve-out” a craft group from an existing bargaining unit. This latter qualification is legislative recognition of the bargaining problems which might result from multiplying the number of bargaining units in an industrial enterprise; and whether fragmentation arises because the system grows in a piecemeal fashion or is subsequently carved up, the industrial relations problems are the same.”

Based on that analysis the applicant union was required to put before the Board, “a coherent body of collective bargaining experience to demonstrate that it *commonly* bargains on behalf of” electricians, separately and apart from other employees in the industry in which the application is made (i.e. mining) or in related industries or at least, if not in the particular industry in question, in the collective bargaining system as a whole.

Examining the collective agreements to which the IBEW was party in the various industries, in the United States and Canada, the Board found that, outside of the construction and related industries, IBEW’s presence as representatives of electricians or maintenance electricians was minimal. The Board concluded that even assuming that the group of employees in question can be described as the craft of “electricians” or “maintenance electricians”, the union had failed to establish that it *commonly* bargained for such group separately and apart from other employees. The Board stated that the evidence disclosed that the union’s craft bargaining practice was “isolated, sporadic, unrepresentative and decidedly *uncommon*”. Therefore the applicant was held not entitled to a separate craft bargaining unit under section 6(3). *Kidd Creek Mines Ltd.*, [1984] OLRB Rep. Mar. 481.

## CONSTRUCTION INDUSTRY DECISIONS

### Union liable in damages for unlawful strike caused by its officer

In this construction industry grievance, the Board was faced with the issue of the liability in damages of a trade union for monetary loss resulting from an unlawful strike caused by a union job steward in breach of a no-strike clause in the collective agreement.

The evidence indicated that the job steward of the Ironworkers, Local 786, took issue with the employer and officers of his trade union regarding the assignment of certain work by his employer to other employees who were millwrights and represented by another trade union. When the employer continued the assignment, the steward caused the Ironworkers to walk off the job.

Having concluded that the circumstances satisfied the definition of “strike” in the Act, the Board reviewed and adopted arbitration jurisprudence which holds a trade union vicariously liable in damages for breaches of a no-strike clause by its officials. Turning to the provisions of the collective agreement dealing with the functions a job steward, the Board had no difficulty concluding that a job steward represents the interests of the union and was an official and agent of the union.

The Board adopted the reasonable standard of conduct pronounced by the arbitrator in *Re Polymer Corp. Ltd.* (1958) 10 LAC 31 (Laskin), p.39 that a union “will not through its proper officers, sanction or direct or condone or encourage stoppages by any person in the bargaining unit”. Applying that standard to the facts before it, the Board found that the job steward in question had instigated the strike of the applicant’s ironworker employees. The Board noted that it may have found the union liable in damages even in the absence of the job steward’s complicity in



the strike because it had doubts whether union officials, given their experience, acted with appropriate diligence to avert a strike.

Relying on *Re Polymer* for the proposition that arbitrators have the authority to award damages for proven losses attributable to an unlawful strike, the Board proceeded to assess the losses suffered by each of the applicant employers as a result of the unlawful strike and directed the union to pay the amounts so assessed to the applicants forthwith. *Dominion Bridge Company Limited, et al and Ironworkers, Local 786 et al*, [1983] OLRB Rep. Apr. 503.

### **Local practice estopping union from enforcing strict terms of provincial agreement**

The respondent employer, based in Kitchener, was operating an acoustic and drywall installation business in the industrial, commercial and institutional (I.C.I) sector of the construction industry. The employer was bound by the current provincial collective agreement with the carpenters' Council. Locals 1316 and 765 were both members of the Council. Local 1316's geographic area is based in London, and includes Owen Sound. Local 785 is based in Kitchener.

The employer undertook projects in Owen Sound, and made use of employees who were members of Local 785. Owen Sound, however, is in Local 1316's geographic area. As a result, Local 1316 applied to the Board, pursuant to section 124 of the *Labour Relations Act*, to arbitrate its grievance with respect to this issue. The parties were agreed that Article 5 of the Provincial Agreement requires the employer to make use of Local 1316 members for the Owen Sound project. The only issue was whether Local 1316 was estopped from asserting its rights under the collective agreement.

The evidence suggested that there was a long-standing practice in the Kitchener area by which acoustic and drywall contractors in that area used carpenters exclusively from Local 785 when undertaking work in Local 1316's geographic area. There was no evidence that Local 1316 or the council of carpenters' unions ever complained about this practice. The employer stated that this practice had been going on for eighteen years without protest from anyone. The employer also stated that it was financially advantageous to use Local 785 members in Owen Sound, as transportation costs were lower and wages were somewhat lower than the rates for Local 1316 employees. The employer considered these factors when bidding for the project.

The Board considered the doctrine of promissory estoppel, and concluded that despite some doubts expressed by the Divisional Court in *Re Hospital Commission, Sarnia General Hospital and London District Building Service Workers' Union, Local 220, S.E.I.U.*, [1973] 1 O.R. 240 as to whether the doctrine could be applied in labour arbitration proceedings that doubt was removed by the same Court in *C.N.R. Co. v. Beatty*, (1981) 34 O.R. (2d) 385. The Board also noted that it has frequently applied the doctrine in other section 124 applications.

The Board noted that three conditions are necessary for a finding of estoppel: first, there must be a representation by words or conduct intended to be relied on by the party to which it was directed; second, there must be some reliance in the form of some action or inaction; and third, there must be detriment resulting from the reliance. The Board noted that acquiescence or inaction can have the effect of a "representation", and there are good labour relations reasons for this conclusion. Local 1316 acquiesced in the employer's practice of employing Local 785's members in Local 1316 territory. Further, the employer relied on this acquiescence, by bidding in good faith on the obtained work at a number of projects on the basis of the Local 785 wage,



travel and board payments set forth in the Appendix to the collective agreement. Finally, the employer relied on Local 1316's representation to its detriment. If Local 1316 succeeded in this grievance arbitration, the employer would have to pay Local 785 members entitled to work on the projects by virtue of the collective agreement, the difference between the compensation specified in the Appendix for Local 785 and Local 1316. Furthermore, Local 1316 would have to be compensated.

The Board concluded that it would be inequitable to enforce the strict wording of the collective agreement. The grievance was dismissed. However, the Board commented that as the employer now had notice of Local 1316's objections, Article 5 of the agreement could be enforced by Local 1316 in respect of any projects subsequently bid upon by the employer in Local 1316's area. *Losereit Sales and Services Ltd.*, [1983] OLRB Rep. Apr. 569.

### **Whether employees are construction or non-construction employees**

The trade union applied for certification of the employer's bargaining unit employees in the construction industry. An issue arose as to whether certain persons ought to be excluded from the bargaining unit. Three "service employees" were said to be construction labourers by the employer, but the union argued that they ought to be properly excluded from the bargaining unit. The evidence was that the three employees dealt essentially with the Hudac warranty for new homes. They primarily conducted inspections at regular intervals, and often dealt with the purchaser of new homes. If necessary, they effectuated any repairs that they could perform, and called in appropriate repair persons to carry out any other repairs. The trade union took the position that these employees did not carry out construction work, and ought to be excluded from the bargaining unit notwithstanding any concerns the Board might have with respect to the unit's fragmentation. The employer referred to the *PHI International Inc.* case, [1980] OLRB Rep. Dec. 1789, in which two labourers who continued to clean up and do repairs after the purchasers had taken possession of certain condominium units were included in the bargaining unit.

The Board held that the three "service employees" ought to be excluded from the bargaining unit. The employees, in the Board's view, were in fact service employees and not construction employees. The Board accepted the union's argument, and distinguished the *PHI International Inc.* case, *supra*, on the basis that the three service employees in the present case form a distinct and separate operation. *Nu-West Development Corporation Limited.*, [1983] OLRB Rep. May 692.

### **Board distinguishing between mandatory and voluntary trades in construction industry bargaining rights**

This was a certification application in which the Board found that the appropriate unit should be one of glaziers and glaziers' apprentices. The evidence was that none of the three employees employed by the employer were certified tradesmen or apprentice glaziers. They had no qualifications and little or no experience as glaziers. Nevertheless, they were performing "glaziers' work".

The Board distinguished this case from *Irvcon Roofing*, where the Board refused to recognize persons who were not certified tradesmen as employees in a unit of sheetmetal workers. However, the sheetmetal trades was a mandatory trade in that under the *Apprenticeship and Tradesmen's Qualifications Act*, persons other than a certified tradesman were prohibited from working in the sheet metal trade. On the contrary, *Ontario Regulation 39* governing glaziers had the effect of making glaziers a voluntary trade in that they were exempted from the prohibition. Consequently, the Board held that the employees performing glaziers' work were employees in the unit despite the fact that they did not have any qualifications. *C.T. Windows*, [1983] OLRB Rep. May 627.

### **Bench warrant issued against witness failing to appear**

The trade union appeared before the Board, in a referral pursuant to section 124 of the *Labour Relations Act* alleging that the respondent employer violated the collective agreement to which they were bound. The applicant advised the Board that it had subpoenaed two of the principals of the respondent company, and served them with the proper conduct money. Affidavits of service were produced as proof of service. Despite this, the two principals failed to attend the hearing. The applicant advised the Board that it would require the evidence of the two subpoenaed witnesses, and asked the Board to issue warrants for the arrest of the two witnesses.

The Board referred to sections 103(2)(a), 124(3) and 44(8) of the *Act*, in explaining the statutory power given to the Board to grant the applicant the relief requested. The Board referred to its decision in *Casabil Contractor Limited*, [1980] OLRB Rep. Sept. 1278. There, the Board was also confronted with the failure of subpoenaed witnesses to attend during a section 124 (then section 112(a) grievance arbitration). The Board in *Casabil* noted that the enforcement mechanisms contained in sections 12 and 13 of the *Statutory Procedure Act* (the “S.P.P.A.”) were not available to the Board, because by section 3(2)(d) of the S.P.P.A. that statute does not apply to arbitrators under the *Labour Relations Act*. The Board, during a section 124 hearing, sits as an arbitrator. Thus, the power contained in the *Act* is the only authority which the Board can rely on in issuing a bench warrant. The *Act* gives the Board the authority to enforce the attendance of a witness in the same manner as a court of record in civil cases. In Ontario, a court of record in civil cases has the authority to issue a warrant for the arrest of a person who has been duly served with a summons but fails to appear. The warrant is not punitive in nature, but is issued merely to ensure that the witness attends to give evidence. Finally, the Board in *Casabil* stated that a bench warrant will issue if the party seeking the warrant can establish two pre-conditions: first, that the witness was properly served with a summons and sufficient conduct money; and second, that the presence of the witness is material to the ends of justice.

The Board applied the test set out in *Casabil*, and concluded that the presence of the two subpoenaed witnesses would be material to the ends of justice. Warrants were therefore issued for the arrest of the two witnesses, directed to the sheriffs and other peace officers in the Province of Ontario. *Standard Insulation Limited* [1983] OLRB Rep. June 986.

### **Persons hired contrary to collective agreement not eligible to vote in termination application**

The Board in this case considered a construction industry grievance, pursuant to section 124 of the *Labour Relations Act*, as well as an application by a group of employees for the termination of the Carpenters’ Union’s bargaining rights pursuant to section 57(2) of the *Act*.

The employer was active in the construction industry in the southern Ontario area. In 1970, the employer undertook some work in north-western Ontario, and entered into a voluntary recognition agreement with Local 1669 of the Carpenter’s Union for that part of the Province. The Union held no other bargaining rights in respect of the employer’s employees. The collective agreement arising from the 1970 voluntary recognition agreement expired in 1973, and was never renewed. In 1978 the Legislature amended the *Labour Relations Act* to provide for province-wide bargaining by trade. In 1980 a further legislative amendment introduced section 137(2) of the *Act*, which deems employers active in the ICI sector of the construction industry to have recognized affiliated bargaining agents in certain situations.



In a decision in March of 1982 (aff'd by the Divisional Court, Feb. 2, 1983), the Board held that by virtue of section 137(2) of the Act, the Carpenters Union held bargaining rights in respect of all of the employer's employees active in the ICI sector of the construction industry in Ontario. The Board and the Courts were of the opinion that section 137(2) had the effect of extending existing bargaining rights province-wide. Thus, the voluntary recognition agreement which the employer entered into with a local of the Union for a particular area of Ontario resulted in the Union having bargaining rights in all of Ontario. The employer had nineteen employees of whom only one was a union member. Twelve of these employees were hired prior to the Union's assertion of bargaining rights following the 1980 introduction of section 137(2); the remaining seven were hired subsequently. The employees, the evidence suggested, were unfavourably disposed to the Union. Nevertheless, they applied for membership in the Union following the Board's earlier decision. However, their membership applications were ignored by the Union, probably because the union feared that if they were admitted to the Union, they would be considered "employees" eligible to file and vote in a termination application.

The Board was required to consider two basic issues. First, section 57(2) of the Act stipulates that "[a]ny of the *employees* in the bargaining unit . . . may . . . apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit . . ." (emphasis added). The Board was required to decide which the nineteen *de facto* employees, were "employees" for the purposes of the termination application. The relevant provincial agreement required that only union members be hired. Can persons employed contrary to a union security provision be counted in considering a termination application? Second, the Board was required to deal with the Union's grievance. In this regard the union alleged that the employer was employing non-union labour, contrary to the provincial agreement.

The Board first considered the issue of who was an "employee" for the purposes of a termination application. The Board applied the following test: persons engaged by an employer to do work are not "employees" for the purposes of a termination application, if they were hired "knowingly" in violation of the collective agreement. Employees who were originally hired lawfully, on the other hand, must be considered "employees" for the purposes of a termination application. Applying this test, the twelve employees hired prior to the Union's assertion of bargaining rights following the 1980 legislative amendment which brought in section 137(2) were held to be "employees"; but the seven employees hired afterward were not "employees" as defined in section 57(2), and ought not to be considered in processing a termination application.

The Board then considered a number of Union arguments as to why the test enunciated in the Board's jurisprudence should not be applied. The Union maintained that none of the nineteen workers were "employees" for the purposes of section 57(2). The Union referred to the provincial agreement, and argued that a worker must be a union member to be considered an "employee". The Board rejected this argument, pointing out that the collective agreement was not specific in defining "employee". The Board noted that in another Board case, the fact that the term "employee" was defined in a collective agreement as involving union membership could not convince the Board to alter its conclusion that certain non-members were "employees" for the purposes of section 57(2).

The Union also argued that the requirement that the twelve employees hired prior to 1980 be given reasonable notice to join the union prior to discharge may apply in an industrial context, but not in a construction context. The Union pointed to the hiring hall process in the construction industry as warranting a different legal conclusion. The Board rejected this argument, and noted that the *Blouin Drywall Contractors Ltd.* (1975), 8 O.R. (2d) 103 (Ont. C.A.), cited by the Union

in support of this argument, involved construction industry employees wrongfully hired from the outset. The Union also submitted that the twelve employees hired prior to 1980 in fact had reasonable notice to join the Union, as a result of the 1982 decision concerning the Union's bargaining rights with the employer. This argument was rejected by the Board as well. The Board pointed out that the 1982 decision merely stipulated that the Union *may* require the dismissal of the non-union employees. Further, the employees applied to join the Union, but their applications were refused. Finally, the Board referred to the fact that the earlier decision had been stayed by the Divisional Court.

The Board therefore upheld its view that the twelve employees hired prior to the Union's assertion of bargaining rights following the 1980 legislative amendments were "employees" whose views were to be considered in processing the application for termination. *Inducon Development Corporation*, [1983] OLRB Rep. July 1038.

### **Hiring halls — arbitrary and discriminatory job referrals**

A union member brought a complaint under section 89 of the *Labour Relations Act*. The complainant alleged that the distribution of work assignments by a union local hiring hall was conducted in such a way as to be arbitrary, discriminatory and in bad faith contrary to section 69 of the Act and further that the respondent union and its officers brought intimidation and coercion to bear against him contrary to section 70 of the Act.

Evidence showed that there was substantial confusion in the minds of the general membership as to the precise rules and practices of the hiring hall. There were no copies of the hiring hall rules posted. Members were often frustrated in attempts to obtain copies of the union constitution. There appears to have been considerable doubt as to whether such rules existed at all. The Board found that the complainant was passed over numerous times. Work assignments were often granted to those whose names followed the complainant's on the "out of work list" or to union members who had not in fact placed their names on the list at all. Moreover, a purported hiring hall rule that stated that members who quit or refused work assignments could not register on the out of work list for 7 days was either waived or enforced on the whim of the local executive. Similar irregularities existed with regard to the job classifications, where often, employees who had little or no experience in a particular classification were sent to work in such positions.

The Board found that behind many of these irregularities, there existed nepotism and internal union political strife. It found instances in which relatives of the union executive were given jobs in the hiring hall administration itself, while others received preferential treatment in job assignments. Conversely, former electoral opponents (as was the complainant in this instance) as well as disabled employees were discriminated against. The Board found that the favouritism given relatives of the union executive, the "out of order" job referrals and the vague and inaccessible classification system were clearly arbitrary and discriminatory and in violation of section 69 of the *Labour Relations Act*. In coming to this conclusion, the Board noted that union locals and hiring halls are not to be treated as family businesses. The Board went on to state that the union and hiring hall "exist pursuant to statutory rights of exclusive agency established under the Labour Relations Act. The exercise of those rights is a trust to be administered fairly and objectively for the benefit of all members". The Board, however did not find any breach of section 70 of the Act. While there was evidence of arbitrary and discriminatory job referrals, there was nothing to suggest the union executive attempted to coerce or intimidate union members.



The remedies directed by the Board included, the posting of an employee notice in both English and Italian, a cease and desist order and the publication, posting and distribution of a list of hiring hall rules to be presented to the membership for “explanation, discussion and adoption”. The Board also directed that a meeting be convened of the membership to adopt “classifications, standards and procedures” for the hiring hall and that an independent auditor be appointed, by agreement between the respondent and complainant to inspect on a periodic basis for 2 years, the administration of the hiring hall rules and procedures. The Board further directed that the executive committee draft recommendations for the establishment of a system by which disabled workers may be referred to jobs they are able to perform and that copies of the constitution and by-laws be made available to all members requesting copies. The respondent was directed to compensate the complainant for all wages and benefits lost as a result of its violation of section 69 of the *Labour Relations Act*. *Joe Portiss Re Labourers’ International Union of North America, Local 1089* [1983] OLRB Rep. July 1160.

### **Section 124 applying to grievance even though some of the work not in construction industry**

In this construction industry grievance complaint, pursuant to section 124 of the *Labour Relations Act*, the predecessor employer which was bound by a collective agreement purported to lay off its employees. Another corporation was formed, and the laid-off employees were asked to apply for employment with this new corporation. The Board, in an earlier decision, declared that the new corporation was a successor employer, as a sale of a business within the ambit of section 63 had occurred. Notwithstanding this declaration, the successor employer failed to abide by the provisions of the collective agreement with respect to the terms and conditions of employment of its employees. As a result of this failure to abide by the agreement, the applicant trade union filed a construction industry grievance with the Board.

The first issue to be considered was whether the Board had jurisdiction to hear the grievances, pursuant to section 124 of the Act. The evidence indicated that not all aspects of the work covered by the collective agreement fell within the “construction industry”, as defined in section 1(1)(f) of the Act. Some of the work, including the service and maintenance of electrical equipment, did not fall within the definition. The arbitration procedure in section 124 applies to “an employer” and “a trade union” as defined by section 117 of the Act. Section 117 defines “employer” as “a person who operates a business in the construction industry”, “trade union” is defined as a “union that according to established trade union practice pertains to the construction industry.” The issue was whether the arbitration procedure set out in section 124 applies to collective agreements which cover both construction and non-construction work.

The Board held that section 124 applied in the circumstances, and that it therefore had jurisdiction to consider the grievances. There was no doubt that the applicant was a “trade union” within the meaning of section 117 of the Act. There was also no doubt that the employer operated a business in the construction industry, also required by section 117. The definition of employer the Board observed, is not limited to persons who operate a business *exclusively* in the construction industry. Moreover, the Board noted that all of the grievors were “employees” within the meaning of section 117, since all of the workers who were not engaged exclusively in on-site work were commonly associated in their work or bargaining with on-site employees. While the grievors could have filed grievances pursuant to the collective agreement as opposed to section 124, an application pursuant to section 124 was preferable, because grievances primarily related to construction work ought not be subjected to arbitration procedures of a type which have generally been recognized to be ill-suited to the needs of the construction industry. The same reasoning applies to the argument

that the grievors ought to have applied for expedited arbitration, pursuant to section 45 of the Act. Moreover, the Board noted that the respondent employer made no objection to the Board's jurisdiction under section 124 until the time limit set forth in section 45(2) had expired.

Alternatively, the Board concluded that it had jurisdiction under the unfair labour practice procedures provided by section 89 of the Act. Section 50 of the Act provides that a collective agreement is binding upon the employers and trade unions who are parties to the agreement. Section 63(2) provides that, until the Board otherwise declares, a successor employer is bound by the predecessor's collective agreement "as if he had been a party thereto". Thus, the successor employer's failure to honour the collective agreement was a violation of sections 50 and 63(2), and could be enforced by section 89 of the Act. The fact that the complaint was not styled as a section 89 application should not preclude the Board from considering it as such. The Act ought to be construed liberally and without technical formality.

Having found that it had jurisdiction to consider the grievances, the Board had to consider the extent of liability on the successor employer resulting from its collective agreement violations. The employer argued that the grievors had a duty to mitigate their damages. Thus, in the employer's submission, those grievors who did not apply for employment with the successor corporation were not entitled to any compensation. The Board rejected this contention. There was no obligation on the grievors to apply for new employment. The entire scheme of requiring employees to re-apply for employment was a transparent device adopted for the express purpose of jettisoning the collective agreement and the union's bargaining rights. The grievors were not obligated to apply for what they were legally entitled to. Moreover, the Board noted that the grievors were told that they had a possibility, only, of employment on a sporadic basis with the successor business at terms and conditions of employment inferior to that provided for in the collective agreement.

The successor employer also argued that its liability in respect of the grievances ought to extend back only to the date on which it received the Board's earlier decision declaring it the successor employer. The union's position, on the other hand, was that the employer's liability ought to extend back to the date of the lay-offs. The Board rejected the employer's position. According to the Board, section 63(2) of the Act applies to bind a successor employer to a collective agreement "until the Board otherwise declares." Thus, the successor employer was obligated to abide by the provisions of the collective agreement, even in the absence of a section 63 declaration proclaiming that a successorship had occurred.

The successor employer argued that the grievances were untimely, as the filing of the grievances with the Board exceeded the five day time limit provided for in the collective agreement. The Board held that the grievances were in fact timely. First, the Board concluded that the five day limit did not apply to such collective agreement disagreements, as a matter of contractual interpretation. Second, even assuming that the five day limit was applicable, and was mandatory as opposed to directory, the Board concluded that this was an appropriate case to extend the time limits, as permitted by section 44(6) of the Act.

Finally, the employer argued that had it not been for the establishment of a non-union successor employer, union wage rates would have meant that none of the grievors would have been employed, and that therefore the grievors would claim no real loss. This argument, too, was rejected. The evidence upon which the argument was based was strictly hearsay, the Board noted. Moreover, as a matter of labour relations policy, the Board concluded that a party which has breached its obligations under a collective agreement cannot attempt to escape liability for such breaches by asserting that since it only obtained the work in question by disregarding its collective agreement

obligations, the trade union and its members could not claim any loss in respect of that work. If such a defence were available, any employer could proceed to ignore with impunity its wage rate and other collective agreement obligations. In the Board's view such an approach is utterly inconsistent with the provisions, spirit and intent of the *Labour Relations Act*. *Carroll Electric (1982) Limited*, [1983] OLRB Rep. Aug. 1282.

### **Whether respondent employer of grievors**

A number of issues, including whether the applicant trade union and the respondent company were bound by a collective agreement, came before the Board. Before determining these issues, the Board had to determine whether the respondent was the employer of the employees who had grievances pursuant to the alleged collective agreement.

The respondent company entered into an agreement with the board of directors of a non-profit corporation desiring to construct a senior citizen's home. By the terms of the agreement, the respondent provided much of the management on the construction site for the senior citizen's home. In pursuance of this agreement, the respondent contracted for the supply of employees from Employment Canada under the terms of a federal program for the unemployment and disadvantaged. The respondent assigned all work, determined whether the quality of the work was acceptable, and in at least one instance terminated an employee. The directors of the non-profit corporation had no on-site involvement with the work at the project. The employees perceived the respondent to be their employer.

The Board referred to its seven-point test in determining who the true employer was. The purpose of the test, the Board pointed out, is to look beyond the form and appearance of employment relationships to their realities. The seven criteria the Board looked at were:

- (1) The party exercising direction and control over the employees performing the work.
- (2) The party bearing the burden of remuneration.
- (3) The party imposing discipline.
- (4) The party hiring the employees.
- (5) The party with the authority to dismiss the employees.
- (6) The party which is perceived to be the employer by the employees.
- (7) The existence of an intention to create the relationship of employer and employee.

On the facts, the Board found that six of the seven criteria pointed to the respondent being the true employer of the employees. Only criterion (2), the party bearing the burden of remuneration, might be the exception. But even in this respect, the Board noted that the employees would look to the respondent to rectify any error in pay or any failure to pay wages owing, although the non-profit corporation had undertaken the ultimate burden for the respondent's payroll costs.

Based on the seven-point test, the Board concluded that the respondent was the employer of the grieving employees. The Board was not dissuaded from its conclusion upon considering the argument that the respondent acted as employer only to receive the wage subsidy benefits of the federal program, for which non-profit corporations did not qualify. This reason alone did not mean that the respondent was in fact not the employer of record, and while not conclusive by itself of an employer-employee relationship for purposes of the *Labour Relations Act*, it did suggest such a relationship. Coupled with other indicators, the Board could not avoid the conclusion that an employer-employee relationship existed. *Thunderhawk Developments*, [1983] OLRB Rep. Aug. 1378.



### Pre-judgment interest awarded on construction industry grievance award

In this construction industry grievance arbitration, held pursuant to section 124 of the *Labour Relations Act*, the Board found the respondent employer to be in violation of the collective agreement. As the employer failed to hire the grievors, as required by the collective agreement, the Board found that the employer was liable to the grievors for the back pay owing. The grievors, however, argued that they were also entitled to an interest payment to reflect the fact that a significant period of time (in this case, over a year and a half) had gone by since the point in time in which they ought to have been paid for the work they were not permitted to do. The employer opposed the idea of the Board including in its award an interest component. In the employer's view, awarding interest would be penal in effect and not merely compensatory. The employer also asserted that there should not be any award of interest where there is a *bona fide* dispute as to the interpretation or application of the agreement. Finally, the employer argued that the notion of interest is based upon the erroneous assumption that employees would invest the money which they receive in wages. The grievors, on the other hand, were of the view that interest is necessary to put them in the position that they would have been in had the employer complied with its contractual obligations.

The Board proceeded to consider the issue of interest by noting that the collective agreement, as is usually the case, did not address the remedial authority of the arbitrator at all. It merely provided, as required by section 44 of the *Labour Relations Act*, that the arbitration is to render a "final and binding" decision on the matters submitted to him for adjudication. Likewise, section 124 of the Act merely directs the Board to render a final and binding determination. Nowhere is the Board given specific guidelines as to remedy.

The Board noted that its remedial authority is neither limited to what the parties have expressly spelled out in their collective agreement, nor is it necessarily defined by what a court or arbitrator might do in a common law or commercial context. The Board cited a recent Ontario Court of Appeal decision, in which that court clearly stated that arbitration boards ought not rigidly adhere to the procedures followed by the courts, although those procedures might give arbitrators some guidance by way of analogy.

The procedures followed by commercial arbitrators must also be distinguished. In particular, the Board noted that labour arbitration is not solely the creation of the parties' agreement, nor have they opted for it as a matter of voluntary choice. Rather, the arbitration of grievances is a compulsory feature of modern labour legislation. For this reason it is a little artificial to speculate about what the parties must have intended.

The Board went on to review the relevant jurisprudence. In Professor Laskin's *Polymer* award of 1959, it was pointed out that an arbitrator's remedial authority can arise either expressly or by implication from the terms of a collective agreement. The wide remedial authority of arbitrators has been subsequently echoed by the courts. The purpose of an arbitration ought to be to put the grievor, so far as money can do (and perhaps subject to the limitations of reasonable foreseeability and mitigation), in the same position as he would have been in had there been no breach of the agreement.

Based upon these principles, the Board noted that a number of labour arbitrators have recently awarded interest as part of their awards. This attitude conforms to section 38 of Ontario's *Judicature Act*, which one arbitrator referred to as persuasive (although not binding) authority that public policy favours the awarding of pre-judgment interest. Although the *Judicature Act* applies to courts and not to arbitration boards, the public concern evidenced by that statute cannot be ignored.



There have been some recent arbitration decisions in which interest has not been awarded. The Board cited one such recent decision, but rejected its reasoning on the ground that it erroneously analogized consensual commercial arbitration with quasi-statutory labour arbitration. The fact that commercial arbitrators generally do not award interest was not seen by the Board as a convincing reason for denying such relief in labour arbitration. The Board also referred to an 1982 British Columbia Court of Appeal decision, in which that court favoured the awarding of interest in the context of commercial arbitration. In the Board's view, the policy considerations expressed by the B.C. court were equally applicable to an arbitration proceeding.

The Board concluded that its power to render "final and binding" award is undefined and unrestricted. An interest component is an important aspect of the measure of damages when an aggrieved party is able to establish that a sum of money should have been paid some months or years before. The interest component is not a penalty. It is part of the compensation for the loss incurred; that there is a cost or loss arising when money is not paid on time is obvious. Grievors are entitled to full compensation for all foreseeable losses. Based on all of this, the Board concluded that it had the authority to award a sum to compensate the grievors for the loss of the wages and the use of those funds which they would have had if the employer had originally complied with the terms of the collective agreement.

The Board still had to determine how the loss could be calculated and qualified. On the one extreme, the Board could award the high rate of interest that is charged on outstanding credit card purchases. On the other extreme, the Board could award the much lower rate of interest which the wages would have generated had they been deposited into a savings account. The Board concluded that neither rate was desirable, and instead chose to apply a formula similar to that used in the *Judicature Act*, and by the Board in unfair labour practice cases. By this procedure, the Board would adopt the chartered bank's prime rate at the time the proceeding is filed. Accordingly, the Board took the prime interest rate applicable for the month in which the section 124 complaint was filed, and awarded the grievors interest on the earnings which the Board awarded to them. Interest was calculated effective from the date on which the grievors would have been paid for the work which they were improperly denied. *Beckett Elevator* [1983] OLRB Rep. Sept. 1391.

### **Ministerial exclusion of bargaining relationship makes collective agreement lawful notwithstanding province-wide bargaining**

The complainant trade union local alleged that a number of respondents, including another trade union local, violated section 146 of the *Labour Relations Act*. In a designation order made by the Minister of Labour pursuant to section 139 of the Act, a number of locals, including the complainant, were designated as affiliated bargaining agents for the purpose of province-wide bargaining concerning construction labourers in the industrial, commercial and institutional sector of the construction industry. The provincial agreement, made pursuant to the designation order, declared the complainant local to be the exclusive affiliated bargaining agent for the Greater Metropolitan Toronto geographic area. Notwithstanding this, the respondent local had a collective bargaining relationship with the framework employers of formworker labourers in the Greater Metropolitan Toronto area.

Section 146(2) of the Act forbids all collective agreements purporting to affect employees already covered by a provincial agreement. The complainant contended that the respondent local and employers were in violation of section 146(2). The respondents argued that on the facts as alleged by the complainant, there was no *prima facie* case. The respondent local pointed to the

fact that the relationship between itself and the formwork employees was specifically and clearly exempted from the Minister's employee bargaining agency designation order. The complainant, on the other hand, urged the Board to narrowly construe the exemption found in the designation order.

The Board held that the complaint failed to make out a *prima facie* case. Section 146(2) of the Act, the Board explained, is made subject to sections 139 and 145. The Minister of Labour's exclusion of the respondent local's collective agreement was made pursuant to section 139(2). Section 139(2) states that the rule in section 146(2) forbidding other collective agreements does not apply to exclusions made pursuant to section 139(2). The Board concluded that the ministerial exclusion, made pursuant to section 139(2), ousted the application of section 146(2). The complaint was therefore dismissed. *Verdi Forming Limited*, [1983] OLRB Rep. Oct. 1728.

### **Displacing union not required to take incumbent's unit in construction industry**

The applicant trade union applied for certification in respect of a construction industry bargaining unit. The applicant sought to represent certain employees already represented by two incumbent trade unions. The bargaining unit of the incumbent unions included both cement masons and their apprentices as well as construction labourers. The applicant union, however, desired to displace the incumbents of their bargaining rights in respect of cement masons and cement masons' apprentices only. Specifically, the applicant sought certification in respect of all cement masons and their apprentices employed by the respondent employer in Ontario in the industrial, commercial, and institutional (I.C.I.) sector of the construction industry, as well as those employed by the employer in all construction industry sectors in a particular geographic area of the province.

The Board noted that the certification application, if successful, would require the Board to depart from its long established policy in displacement situations. That policy has traditionally led the Board to require the applicant in displacement cases to take the bargaining unit of the incumbent, even though the application concerns the construction industry, with all its craft implications. The Board's traditional policy was based on section 6(1) of the *Labour Relations Act*. However, the Board concluded that the Board's traditional policy probably conflicts with the policy implicit in section 144(1) of the Act dealing with applications for certification in the construction industry. In the instant case, the applicant was bound by a provincial agreement covering cement masons and their apprentices. To require the applicant to take construction labourers as well would mean that the applicant would have to assume bargaining rights for employees who would not be bound by its provincial agreement. The scheme of province-wide bargaining, the Board concluded, enabled the Board to exercise its discretion under section 6(1) so as to permit the applicant to carve out of the incumbent's unit a smaller bargaining unit which corresponds to the scope of the provincial agreement to which the applicant was bound. The Board, therefore permitted the applicant to apply for certification in respect of a unit of cement masons and their apprentices.

An issue arose as to whether a group of waterproofers were entitled to participate in the representation vote concerning the applicant's certification application. The incumbents argued that the waterproofers were entitled to vote, as they were performing work which falls within the jurisdiction of the applicant trade union, as set out in the applicant's provincial agreement. The applicant, on the other hand, argued that the waterproofers were construction labourers rather than cement masons. The issue was whether the Board would take as determinative of inclusion in a bargaining unit the jurisdiction set out in a provincial agreement.



The Board held that the jurisdiction as claimed in a provincial agreement is only one of a number of factors which should be looked at in determining whether employees fall within a particular bargaining unit. This, the Board commented, was a particularly necessary conclusion in circumstances such as the instant case, where work of a particular type is in effect done by a mixed crew of employees. In the present case, the waterproofers could generally be described as cement masons and as construction labourers. Thus, two different provincial agreements were applicable, resulting in overlapping jurisdiction. Since the jurisdictional clauses of the two agreements are to some extent contradictory, they cannot on their own be taken as dispositive of the issue. Rather, the Board pointed to other factors which can be taken into account, such as the nature of the work itself, and the assignment by the employers. In the instant case, it was clear that the waterproofers in issue were employed by their employer as construction labourers and not cement masons. The nature of the work they were performing confirmed this conclusion. The Board concluded that the waterproofers ought not participate in the representation vote. *Duron Ottawa*, [1983] OLRB Rep. Oct. 1639.

### **Casual employees not excluded from construction industry unit**

In this construction industry application for certification, the respondent employer requested that employees who it regularly employs, but on a “casual basis”, be excluded from the applicant union’s proposed bargaining unit. The Board held that these “casual employees” would not be excluded from the unit. Due to the particular nature of the construction industry, the Board has had a long standing practice in certification applications not to distinguish between persons employed on a part-time or temporary basis from those employed on a more regular basis. Nothing on the facts of the case leads the Board to depart from this practice. *Freure Homes Limited*, [1983] OLRB Rep. Nov. 1839.

### **Sector determination in Construction Industry**

The Board heard two applications under section 150 of the *Labour Relations Act*, wherein the Board was asked to determine whether two separate projects came within the industrial, commercial and institutional sector of the construction industry. The first project involved the construction of a nineteen level building built for, and on land owned by, the Hospital for Sick Children. The eighth to nineteenth levels of the building consist of 119 self-contained apartment units. The apartments are leased to the general public through a rental agent, although preference is given to doctors serving periods of residency at the Hospital. The first and second levels of the building are parking garages to be used by the occupants of the apartments. The third to seventh levels are also parking garages, but were to be used by the general public. The second project involved the construction of a building on the campus of the Salvation Army Training Centre in Toronto. The building has two floors and a basement. One of the floors has five self-contained apartments to be used by those attending the training centre. There was, among other things a large play area. The first floor contained a small lounge and offices. The section 150 determination centres around whether the concrete forming work on the two projects fell under the ICI provisions of the Act. The Board reviewed the history of concrete forming in the Toronto area, including the emergence of the Ontario Form Work Council and its bargaining arrangements. The Board also reviewed the collective bargaining history of the Metropolitan Toronto Apartment Builders Association, and in particular its agreement with the Toronto-Central Ontario Building and Construction Trades Council. Both respondents were bound to the terms of the agreement, and the applicant was a member of the Council. The agreement specifically states that it applies only to residential construction, and then defines what constitutes a residential project. The Board found

that the general practice in the Toronto area has been to apply this definition when determining whether or not a project is residential. Both of the projects in question fell within the definition of a residential project.

The Board was of the view that local area practices and local agreements were relevant criteria in the Board making a ruling in a section 150 case. The Board warned, however, that such criterion would not always be relevant as there may be some projects which clearly fall into one sector or another and an agreement to the contrary would not influence the Board's determination. With respect to the Sick Children's Hospital, the Board found that more than half of the building could be classified by its use as residential and that the local agreements and practices would support a conclusion that it was residential. As such the Board concluded that the project did not fall within the ICI provisions of the Act. With respect to the Salvation Army complex, the Board found that the recreation part of the project was incidental to the general residential nature of the complex. In accordance with local agreements and practices the Board concluded that this project was also residential for the purposes of determining collective bargaining rights.

The Board also held that although the applicant in this case was a member of the Building Trades Council, it was not estopped in a section 150 application from taking a position which ran counter to the definition of a residential project contained in the agreement between the Council and the Apartment Builders Association. In this regard, the *Labour Relations Act* contains within its ICI provisions safeguards which ensure that parties cannot simply contract out of the provisions of the Act relating to the ICI sector. *West York Construction Ltd.*, [1983] OLRB Rep. Dec. 2132.

### **Construction industry bargaining unit certified although employer only peripherally in industry.**

The applicant trade union applied for certification in respect of the employer's construction industry employees involved in pipefitting and steamfitting. The applicant already had bargaining rights with respect to the employer's maintenance operations. It was now seeking bargaining rights with respect to the employer's alleged activities in the construction industry.

The evidence established that the employer was engaged in a continuing basis in performing routine maintenance in connection with its buildings and structures. Toward the end of 1982, the respondent was engaged in a programme to install replacements for obsolete and/or non-functioning radiators and thermostats, so that its heating system would perform more economically. On the date of application, at least two of the seven plumbers employed by the respondent were engaged in this work.

The respondent employer argued that it was neither an "employer" nor a member of any "employer bargaining agency" as defined in section 117 of the *Labour Relations Act*. The employer also argued that it was neither a member of any "sector" as defined in section 117(e) of the Act, nor a member of any "employer bargaining agency" as defined in section 137(1)(d). The employer also asserted that as it did not carry on business in the construction industry, nor employ plumbers, pipefitters, steamfitters, or their apprentices in the construction industry, the construction industry provisions of the Act were not available to the applicant union.

The Board first determined whether the work in question could be properly characterized as construction rather than maintenance work and concluded that the work could be best characterized as "repairing", which by section 1(1)(f) of the Act is considered part of the construction industry.



The Board then considered the employer's objections. The Board admitted that the employer was principally involved in the business of providing education, and not construction. But an employer need not be principally concerned with construction to fall under the construction industry provisions of the Act. In the past, the Board has held that both Boards of Education and municipalities may on occasions operate businesses in the construction industry. The essential fact, the Board stated, is that the work performed on the date of the application for certification was clearly work which would fall within the industrial, commercial and institutional ("I.C.I.") sector of the construction industry. The fact that the employer had not previously been a member of an employer bargaining agency, and may not have previously performed work in any sector of the construction industry, did not insulate it from the consequences of its activities in the construction industry on the date of the application for certification. The union was therefore certified. *Board of Education for the City of Windsor*, [1983] OLRB Rep. May 831.

### **Enforceability of oral settlement of grievances**

In this case the Board dealt with a section 124 referral alleging that the employer had not complied with an oral settlement of a prior grievance. In the earlier grievance, the applicant alleged that the grievor had been improperly laid off and unjustly discharged. A settlement of this grievance had allegedly been reached by the parties after a Labour Relations Officer had been appointed, but in the absence of that officer. The employer's position was that an oral settlement in these circumstances was not enforceable; that the non-compliance allegation was not arbitrable under section 124; and that the manager who had entered into the alleged settlement had no authority to do so.

The Board ruled that the allegation that the respondent had failed to comply with the settlement of a grievance constituted an arbitrable question concerning the "application" or "administration" of the collective agreement, within the meaning of subsection 124(1) of the Act. (It also ruled that a failure by the respondent to comply with the monetary portion of a settlement of the type alleged by the applicant would constitute a breach of a particular provision of the applicable collective agreement). In reviewing previous Board authority on the subject of oral settlements, the Board reiterated that nothing in the *Labour Relations Act*, the common law, or the pertinent arbitral jurisprudence requires that a settlement of a grievance be reduced to writing before the settlement can be enforced; nor in this case was there any such requirement contained in the collective agreement by which the parties in question were bound. The Board emphasized its commitment to settlement activity as a highly desirable method of resolving labour relations disputes, including grievances referred to the Board under section 124. The Board also indicated that it was loath to adopt any approach which might limit or impair the settlement process or discourage its use, by imposing unnecessary technicalities or limitations, such as an absolute requirement of written settlements in the context of section 124.

With respect to the matter of the manager's authority, the Board noted that there was nothing in the facts that would indicate to the union representative that the manager did not have authority to enter into the settlement in question. The Board further noted that reasonableness of the union representative's reliance upon his conclusion that the respondent's manager had such authority was supported both by the context in which this settlement was reached and by the history of the dealings between the individuals concerning grievance settlements. *Perfection Rug Co. Ltd.*, [1984] OLRB Rep. Jan. 68.

### **Status of Building Trades Council working agreement**

In this referral under section 124 of the *Labour Relations Act* the applicants alleged that the respondents, by signing a working agreement with the Toronto-General Ontario Building and

Construction Trades Council, had voluntarily recognized the applicant trade unions and any other trade unions which are affiliated to the Council. As such, they alleged that the respondent violated the said agreements by employing persons who were not members of the applicant trade unions and engaged the use of sub-contractors who were not in collective bargaining relationships. Before the Board could examine the merits of this allegation it was required to determine the status of the Building Trades Council's Working Agreement.

In undertaking this determination, the Board reviewed the substantive provisions of the working agreement. It then applied the relevant definitions in the *Labour Relations Act* and concluded that the Council was neither "a trade union", nor "a certified council of trade unions" and that therefore the Council could not enter into a collective or voluntary recognition agreement in its own name. The Board noted however, that while the Council may not enter into a recognition agreement on its own behalf, it may do so as an agent of the affiliates of the Council. The effect of the employer signing the working agreement was to enter into a series of recognition agreements between its affiliates and itself.

Having ruled on the question of the status of the working agreement, the issue of whether bargaining rights could be acquired before the employees in question were actually employed by and working for an employer was addressed. In so doing, the Board referred to the principles enunciated in *Nicholls-Radtke*, [1982] OLRB Rep. July 1028. There the Board examined the unique circumstances of the construction industry. The Board noted that unemployed members in the union's hiring hall had already selected their bargaining agent as their union. This fact if read together with section 125 pointed to the conclusion that even when there are no employees in the bargaining unit, a bargaining agent may enter into a valid collective agreement.

Applying this reasoning, the Board found that the working agreement was signed on the understanding that the affiliates would supply competent workers upon request and that in the circumstances of the signing of the working agreement, a valid recognition agreement was signed by the Council as agent for its affiliates. Therefore, since the working agreement incorporates the collective agreements of the affiliates by reference, these agreements become applicable to the work performed by the employees of the respondent. *M.J. Guthrie Construction Ltd.*, [1984] OLRB Rep. Jan. 50.

### **Bench warrant refused where no due service of summons**

In a construction industry grievance hearing, the union established that a witness, who had been served summons and conduct money, was not present at the hearing and sought a bench-warrant for the arrest and production of the witness. The evidence disclosed that the witness had been served the afternoon before the hearing date, even though the union was aware of the hearing date approximately ten days in advance.

The Board took notice that the same witness had failed to appear at an earlier proceeding and that the Board had issued a bench warrant in that instant. The Board also had evidence that the witness, as the principal of the respondent employer, may have had notice of the hearing well before the service of summons. Yet, the Board stated that receipt of notice of hearing as respondent is very different from notice of a requirement to attend as a witness pursuant to a summons. A respondent is under no obligation to attend a hearing whereas a witness is. Due to the short notice received by the witness, the Board was not prepared to find that there was due service of summons. The request for a bench warrant was denied and the hearing listed for continuation on another date. *Standard Insulation Ltd.*, [1984] OLRB Rep. Feb. 383.

## VI COURT ACTIVITY

*C.N. Shoes Company Limited,*  
**Supreme Court of Ontario, Divisional Court,**  
**April 19, 1983; Unreported**

The union's complaint filed under section 89 of the Act alleging violations of sections 66 and 70 by unlawfully terminating two employees was upheld by the Board. The employer sought judicial review, the only basis relied on before the Court being that the Board had made wrong inferences from the evidence and from the facts found by the Board. The Court dismissed the application, finding no jurisdictional error.

*Alcan Building Products, a Division of Alcan Canada Products Limited,*  
**Supreme Court of Ontario, Toronto Motions Court,**  
**May 12, 1983; Unreported**

The union filed unfair practice complaints with the Board, requesting various remedies including damages. Prior to the hearing before the Board, the employer brought an application for prohibition under section 6(2) of the *Judicial Review Procedure Act* to prevent the Board from dealing with that aspect of the union's complaint relating to the claim for damages, on the basis that the Board lacked jurisdiction to grant the remedy sought.

The Court held that it was within the Board's jurisdiction to consider whether it was capable of granting the relief sought, and that should the Board in fact decide the case in a way that gave rise to jurisdictional error, the applicant would have a remedy by way of judicial review before the Divisional Court. The application for prohibition was dismissed.

*Harold R. Stark Company Limited,*  
**Supreme Court of Ontario, Divisional Court,**  
**June 8, 1983; Unreported.**

The union referred a grievance to the Board under section 124 of the Act, alleging the employer breached the collective agreement by subcontracting work to a subcontractor that was not a signatory to the Provincial Agreement with the union. The employer filed a jurisdictional dispute complaint under section 91 with the Board with respect to this matter. A majority of the Board held that the complaint did not fall within the provisions of section 91 of the Act.

The employer sought judicial review of the Board's decision. The Court held that whether the Board declines jurisdiction under the Act or having assumed jurisdiction subsequently makes an error in interpretation of the Act, the test is whether the interpretation was patently unreasonable or a genuine error of law of such magnitude as to justify the intervention of the court. Finding neither, the application was dismissed.

*Biltmore Stetson (Canada) Inc., et al.,*  
**Supreme Court of Ontario, Court of Appeal, June 16, 1983;**  
**43 O.R. (2d) 243; 150 D.L.R. (3d) 577; 83 C.L.L.C. 14,062; 21 A.C.W.S. (2d) 455.**

The union appealed the decision of the Supreme Court of Ontario, Toronto Motions Court in this matter which had granted an application for judicial review (see Ontario Labour Relations



Board Annual Report 1982-83) to the Ontario Court of Appeal. The issue was whether the Board had properly viewed a notice to bargain served by a union upon an employer, as notice within the meaning of section 63 of the Act.

The Court of Appeal in allowing the appeal held that the Board had not asked itself the wrong question in any sense of departing from their proper inquiry. Further, the wrong question test is of little relevance in resolving whether any error is jurisdictional. The Court also held that section 63(3) could be interpreted in the way the Board had done, and that the Board's interpretation of its authority was not patently unreasonable.

The Court also rejected the arguments with respect to the misnomer of the employer and summarily dismissed the challenge to the Board's decision based on the freedom of association provision in the *Canadian Charter of Rights and Freedoms*.

***George Ryder Construction Ltd.,*  
Supreme Court of Ontario, Divisional Court,  
June 20, 1983; Unreported**

The Board, in deciding a grievance submitted to it under section 124 of the Act, held that the union need not prove its damages by producing witnesses to be available for cross-examination with respect to mitigation of damages. The Board found that the union, having established the existence of three members on its out of work list at the time of breach, had proved its damages.

The employer sought judicial review on the basis that the Board had no evidence on which to base its finding. The Court held, in dismissing the application, that there was evidence before the Board which could form the basis for the compensation awarded to the union and that the Board's decision not to require further evidence was within its jurisdiction and was not a denial of natural justice.

***Gurnham Dhanota,*  
Supreme Court of Ontario, Divisional Court, June 29, 1983;  
42 O.R. (2d) 74; 148 D.L.R. (3d) 569; 83 C.L.L.C. 14,052;  
Court of Appeal  
September 7, 1983; Unreported**

The applicant filed a complaint with the Board alleging a breach of the duty of fair representation in section 68 of the Act by the respondent trade union. The Board conducted a hearing on the preliminary objection by the union contending that the Board should not hear the merits of the complaint due to the lengthy delay in filing. The Board upheld the objection and dismissed the complaint without a hearing on the merits.

The applicant sought judicial review, firstly on the basis that section 89(4) should be interpreted so as to give the Board no discretion to decline to inquire into a complaint, and secondly on the basis that the Board had no right to fetter its own discretion by holding a show-cause hearing with respect to the delay before investigating the merits of the application.

The Court held that section 89(4) did give the Board a discretion, and that the Board in exercising that discretion is entitled to lay down its own procedure. The application was dismissed.

Subsequently, an application for leave to appeal was denied by the Court of Appeal.



*Bhupinder Singh Sidhu,*  
**Supreme Court of Ontario, Divisional Court,**  
**June 30, 1983; Unreported**

The applicant filed a section 89 complaint with the Board alleging a violation of section 68 of the Act by the trade union respondent. The Board found no violation.

The applicant sought judicial review on the basis that the Board had exceeded its jurisdiction by failing to answer the question remitted to it, by making findings of fact on no evidence, and by committing an error of law, and further that the Board had wrongfully declined jurisdiction by ignoring the question remitted to it.

The Court in dismissing the application held that the Board had fairly considered the evidence and the representations made to it, making no error of law, committing no breach of natural justice, and not declining jurisdiction.

*Foodcorp Limited (Urbana Restaurant Division Commerce Court),*  
**Supreme Court of Ontario, Toronto Motions Court,**  
**July 11, 1983; Unreported.**

The union had recently had several locals of the same international amalgamated with it. It had also undergone a minor change of name. Subsequently the union filed an application for certification in its former name. Following a pre-hearing vote, the Board certified the union, despite discrepancies in the name of the union in some of the membership evidence. The Board held that the change of name did not amount to a change of entity and that there was no possibility of confusion in the minds of the employees as to which entity they were joining.

The employer sought judicial review and pending this, sought a stay of the Board's decision. The stay application was dismissed. The application for judicial review is pending.

*Knob Hill Farms Limited,*  
**Supreme Court of Ontario, Toronto Motions Court,**  
**July 29, 1983; Unreported**

The Board, in hearing a section 89 complaint filed against the employer, required the employer to proceed first because of the reverse onus provided for in section 89(5). The employer filed an application for judicial review of the Board procedural ruling and sought a stay of the Board's proceedings pending the hearing of its application for judicial review.

The Court denied the stay application, finding the balance of convenience in favour of allowing the hearing to proceed. The application for judicial review is pending.

*Bioshell Inc.,*  
**Supreme Court of Ontario, Toronto Motions Court,**  
**September 6, 1983; Unreported**

Two unions sought certification from the Board with respect to the same unit, one as applicant, one as intervener. The Board ordered a vote but did not include a "no union" option on the ballot, both unions having filed membership evidence indicating in excess of fifty-five per cent support.

The employer filed an application for judicial review and sought a stay of the Board's proceedings pending the hearing of the application.

The application for a stay of proceedings was dismissed. The application for judicial review is pending.

***International Wallcoverings, A Division of International Paints (Canada) Limited***  
**Supreme Court of Ontario, Toronto Motions Court,**  
**September 12, 1983; Unreported**

The union filed a section 89 complaint with the Board with respect to the employer's dismissal of certain striking employees for alleged strike-related misconduct. The Board found violations of sections 64, 66 and 70 of the Act.

The employer filed an application for judicial review and sought a stay of the Board's decision pending the hearing of their application for judicial review, primarily arguing that the Board had misinterpreted section 64.

The stay application was dismissed. The judicial review application is pending.

***Broadway Manor Nursing Home, et al.,***  
**Supreme Court of Ontario, Divisional Court, October 24, 1983;**  
**44 O.R. (2d) 392; 4 D.L.R. (4th) 231; 22 A.C.W.S. (2d) 231;**  
**Court of Appeal,**  
**November 14, 1983; Unreported**

The applicant union filed a displacement application with the Board. The Board dismissed the application, holding it to be untimely, on the basis that by virtue of section 13(b) of the *Inflation Restraint Act*, the "open period" had been closed.

The union sought judicial review on the basis that the Board had misinterpreted section 13(b) or alternatively on the basis that the *Inflation Restraint Act* was inconsistent with the freedom of association guaranteed by section 2(d) of the *Canadian Charter of Rights and Freedoms*.

The Court, which heard the application together with two other applications relating to the *Inflation Restraint Act*, allowed the application for judicial review, quashing the decision of the Board and remitting the matter to be dealt with accordingly. One justice based his decision on a finding that the Board's interpretation of section 13(b) was incorrect. The *Inflation Restraint Act* not being the home statute of the Board he held this was a reviewable error. He found in the alternative that the *Act* violated the *Charter*. The other two justices found that though the Board correctly interpreted section 13(b), the *Act* violated the *Charter* and was therefore, to the extent it violated it, of no force and effect.

The respondents were subsequently granted leave to appeal by the Court of Appeal. That application is pending before the Court of Appeal.

*Gerald O. Aspinall; Walter Deringer; Douglas N. Butler; Helen Sarah Freedhoff, John M. Goodings; William A. Jordan; Alfred B.P. Lever; Robert P. McEachran; Delmor McCormack Smyth,*

**Supreme Court of Ontario, Divisional Court,**

**November 30, 1983; 44 O.R. (2d) 251; 3 D.L.R. (4th) 763; 84 CLLC ¶ 14,010**

Nine separate applications had been made to the Board under section 47 of the Act, for religious exemption from the payment of dues. All of the applications were denied by the Board because the applicants' convictions were held not to be religious as they did not in some way relate to the Divine.

The applicants each sought judicial review on the basis that the Board had wrongly interpreted section 47. The Court in separately dismissing the applications, found no error in the Board's interpretation. In addition the Court rejected the applicant's argument that sections 43 and 46 violate the *Canadian Charter of Rights and Freedoms*, on the grounds of inadequacy of notice to the parties and absence of notice to the Attorneys-General as required by sections 35 of the *Judicature Act*.

*Traugott Construction Limited,*

**Supreme Court of Ontario, Divisional Court,**

**January 20, 1984; 45 O.R. (2d) 129; 6 D.L.R.(4th) 122, 84 CLLC ¶ 14,025; 4 Admin. L.R. 98**

The union referred a grievance to the Board under section 124 of the Act. The Board found that the collective agreement had been signed as a result of unlawful picketting by the council of trade unions to which the union belonged. The Board therefore refused to give effect to the agreement and held that the grievance was therefore not arbitrable.

The union sought judicial review. The Court adopting as its test, whether the Board's interpretation was so patently unreasonable as to permit interference by the Court, dismissed the application. The Court held in the alternative that this was not a proper case to exercise its discretion to grant judicial review, as the union's cause of action was founded upon its own illegal act.

*Consolidated Bathurst Packaging Ltd.,*

**Supreme Court of Ontario, Divisional Court,**

**February 13, 1984; 24 A.C.W.S. (2d) 49.**

In a decision dated September 30, 1983 the Board found that the respondent employer had contravened the duty to bargain in good faith by failing to disclose a planned plant closure during negotiations. The employer filed an application for reconsideration, claiming *inter alia* that there was a denial of natural justice in that the panel that heard the case had discussed the matter with other members and staff of the Board. This application for reconsideration was dismissed by the Board by decision dated December 9, 1983. The employer filed an application for judicial review of the Board decision on the grounds of denial of natural justice.

In the interim, the parties having failed to agree upon the quantum of damages flowing from the breach, the Board scheduled a further hearing to deal with the question of remedy. The employer filed a motion under section 4 of the *Judicial Review Procedure Act*, seeking a stay of the proceedings. Having received the submissions of the counsel for the employer, the court was of



the opinion that the balance of convenience did not justify a stay of proceedings and the application was dismissed.

***Consolidated Bathurst Packaging Ltd.,***  
**Supreme Court of Ontario, Divisional Court,**  
**March 6, 1984; Unreported.**

Subsequent to the dismissal of its application for a stay of proceedings, the employer moved for an order directing the Board to produce a copy of "a draft decision", (which had been referred to in the Board's decision dismissing the employer's application for reconsideration) and to add such draft decision to the record of the Board that had been filed in court in relation to the employer's application for judicial review.

In dismissing the application, the court noted that there was no dispute as to what was the process the Board had followed. The issue before the court in the application for judicial review was whether this undisputed Board procedure resulted in a denial of natural justice. The court was of the opinion that the draft decision was not necessary for the court to determine the issue before it. However, the court noted that if the full court hearing the application for judicial review determines that the draft decision is necessary for the determination of the issue before it, the court is empowered to direct that the draft decision be forwarded for inclusion in the record.

***Quaker Oats Company of Canada Limited; Black Diamond Cheese,***  
**Supreme Court of Ontario, High Court,**  
**March 21, 1984; Unreported.**

The Quaker Oats Employees Independent Union and the Black Diamond Cheese Employees Independent Union applied for certification with respect to the employees of the employers to displace the incumbent United Food and Commercial Workers. The Board satisfied itself of the degree of the applicants' membership support and directed pre-hearing representation votes. The UFCW filed two applications for judicial review on the basis, *inter alia*, that by directing pre-hearing votes prior to determining whether the applicants were trade unions under the Act, the Board had exceeded its jurisdiction.

The applications were returnable before a single judge of the High Court and the UFCW argued that the delay resulting in having the matter heard before the Divisional Court would result in a failure of justice. After considering the submissions of the parties the court was not persuaded that irreparable harm or failure of justice was a likely result of transferring the matter for hearing before the Divisional Court. The applications for a speedy hearing were therefore dismissed and the matters are presently pending before the Divisional Court.



## VII CASELOAD

In fiscal year 1983-84, the Board received a total of 3,135 applications and complaints, an increase of 14 percent over the intake of 2,762 cases in 1982-83. Applications for certification of trade unions as bargaining agents, one of the three major categories of the Board caseload, increased by 15 percent from last year's filings. The second major category — complaints of contravention of the Act — increased by 9 percent, while the third major category — referrals of grievances under construction industry collective agreements — decreased by seven cases.

In addition to the cases received, 409 were carried over from the previous year, making a total caseload of 3,544 in 1983-84. Of the total, 2,797, or 79 percent, were disposed of during the year; proceedings in 213 were adjourned sine die\* (without a fixed date of further action) at the request of the parties, and 534 were pending in various stages of processing at March 31, 1984.

The total number of cases processed during the year produced an average workload of 322 cases for the Board's full-chairman and vice-chairmen, and the total disposition represented an average output of 254 cases.

### Labour Relations Officer Activity

In 1983-84, the Board's labour relations officers were assigned a total of 2,029 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 57 percent of the Board's total caseload, and included 459 certification applications, 37 cases concerning the status of individuals as employees under the Act, 743 complaints of alleged contraventions of the Act, 763 grievances under construction industry collective agreements, and 30 complaints under the *Occupational Health and Safety Act*. (Table 3).

The labour relations officers completed activity in 1,657 of the assignments, obtaining settlements in 1,402 or 85 percent. They referred 255 cases to the Board for decisions, proceedings were adjourned sine die in 100 cases, and settlement efforts were continuing in the remaining 276 cases at March 31, 1984.

Labour relations officers were also successful in having hearings waived by the parties in 138, or 62 percent, of 222 certification applications assigned for this purpose.

### Representation Votes

In 1983-84, the Board's returning officers conducted and counted the results of 182 representation votes held among employees in one or more bargaining units in cases that were either disposed of during the year or in which a final decision closing the case had not been issued by the Board by March 31, 1984. Of the total votes, 138 involved certification applications, and 44 were held in applications for termination of existing bargaining rights. (Table 5).

One hundred and three of the certification votes involved a single union on the ballot, 34 involved two unions, and one involved 3 unions. Of the multi-union votes, 31 entailed attempts

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\* The Board regards sine die cases as disposed of, although they are kept on docket for one year.

to replace incumbent bargaining agents, and four involved two unions seeking to represent the same employees in collective bargaining for the first time.

A total of 10,137 employees were eligible to vote in the 182 elections held, of whom 8,418, or 83 percent, cast ballots. Of those who participated, 4,245 voted in favour of union representation. Sixty-six percent of the employees who participated in the two-union certification elections voted for union representation, compared to 48 percent who voted for union representation in the single-union elections.

### **Last Offer Votes**

In addition to taking votes ordered in its cases, the Board's Registrar was requested by the Minister to conduct votes among employees on employers' last offer for a settlement of a collective agreement dispute under section 40(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Registrar and field staff, because of their expertise and experience in conducting representation votes under the Act, are used to make the necessary arrangements for the orderly administration of votes directed by the Minister under that section.

Of the 21 requests received by the Minister during the fiscal year, votes were conducted in 15 situations, and settlements were reached in the other six cases before a vote was taken.

Of the 15 votes held, employees accepted the employer's offer in 3 cases by 67 votes in favour and 40 against, and rejected the offer in 12 cases by 533 votes in favour and 1,485 against.

Since the section was introduced in June 1980, a total of 87 requests were made to the Minister up to March 31, 1984. The employer's offer was accepted in 10 cases and turned down in 47 cases. Settlements were reached in 26 cases and the request was withdrawn in 4 cases prior to a vote being conducted.

### **Hearings**

The Board held a total of 1,693 hearings and continuation of hearings in 1,315, or 37 percent of the 3,544 cases processed during the fiscal year, an increase of 237 sittings over the number held in 1982-83. One hundred and thirteen of the hearings were conducted by vice-chairmen sitting alone, compared with 40 in 1982-83.

### **Processing Time**

Table 7 provides statistics on the time taken by the Board to process the 2,797 cases disposed of in 1983-84. Information is shown separately for the three major categories of cases handled by the Board: certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements.

A median of 29 days were taken to proceed from filing to disposition for the 2,797 cases completed in 1983-84, compared to 27 days in 1982-83. Certification applications were processed in a median of 22 days, a drop of 3 days from 1982-83; complaints of contravention of the Act took 29 days, the same as in 1982-83; referrals of construction industry grievances required 15 days, compared to 17 days in 1982-83; and the median time for the total of all other cases dropped to 43 days from 60 days in 1982-83.

More than 82 percent of all dispositions were accomplished in 84 days (3 months) or less, compared to 87 percent for certification applications, 78 percent for complaints of contraventions of the Act, 89 percent for referrals of construction industry grievances, and 72 percent for the total of all other types of cases. The number of cases requiring more than 168 days (6 months) to complete dropped to 195 from 199 in 1982-83.

### **Certification of Bargaining Agents**

In 1983-84, the Board received 871 applications for certification of trade unions as bargaining agents of employees, an increase of 113 or 15 percent from 1982-83. (Tables 1 and 2).

The applications were filed by 87 trade unions, including 28 employee associations. Eleven of the unions, each with more than 20 applications, accounted for 65 percent of the total filings: Labourers (94 cases), Carpenters (84 cases), Public Employees (CUPE) (63 cases), Food and Commercial Workers (58 cases), Service Employees International (57 cases), International Operating Engineers (49 cases), Teamsters (37 cases), United Steelworkers (35 cases), Retail Wholesale Employees (34 cases), Auto Workers (30 cases), and Hotel Employees (23 cases). In contrast, 66 percent of the unions filed fewer than 5 applications, with the majority making just one application. These unions together accounted for 11 percent of the total certification filings. (Table 8).

Table 9 gives the industrial distribution of the certification applications received and disposed of during the year. Non-manufacturing industries accounted for 76 percent of the applications received, concentrated in construction (254 cases), health and welfare services (109 cases), accommodation and food services (53 cases), miscellaneous services (38 cases), and retail trade (35 cases). These five groups comprised 74 percent of the total non-manufacturing applications. Of the 209 applications involving establishments in manufacturing industries, 61 percent were in six groups: food and beverage (36 cases), metal fabricating (31 cases), transportation equipment (17 cases), printing, publishing (15 cases), wood products (14 cases), and chemical and chemical products (14 cases).

In addition to the applications received, 108 cases were carried over from last year, making a total certification caseload of 979 in 1983-84. Of the total, 817 were disposed of, proceedings were adjourned in 11 cases, and 151 cases were pending at March 31, 1984. Of the 817 dispositions, certification was granted in 555 cases including 48 in which interim certificates were issued under section 6(2) of the Act, and 3 that were certified under section 8; 117 cases were dismissed; proceedings were terminated in 3 cases; and 142 cases were withdrawn. The certified cases represented 68 percent of the total dispositions, compared to 67 percent in 1982-83.

Of the 672 applications that were either certified or dismissed, final decisions in 140 cases were based on the results of representation votes. Of the 142 votes conducted, 105 involved a single union on the ballot; and 36 were held between two unions, of which 34 affected incumbent bargaining agents and two involved two applicants. Applicants won in 73 of the votes and lost in the other 69.

A total of 9,228 employees were eligible to vote in the 142 votes, of whom 7,508 or 81 percent cast ballots. In the 73 votes that were won and resulted in certification, 3,905 or 79 percent of the 4,937 employees eligible to vote cast ballots, and of these voters 2,605 or 67 percent favoured union representation. In the 69 elections that were lost and resulted in dismissals, 3,603 or 84



percent of the 4,291 eligible employees participated, and of these only 34 percent voted for union representation. (Table 6).

Small bargaining units continued to be the predominant pattern of union organizing efforts through the certification process in 1983-84. The average size of the 555 applications that were certified was 31 employees, compared to 27 in 1982-83. Units in construction certifications averaged 6 employees, the same as in 1982-83; and in non-construction certifications they averaged 40 employees, compared to 36 in 1982-83. Seventy-seven percent of the total certifications, including all except three in construction, involved units of fewer than 40 employees, and about 41 percent applied to units of fewer than 10 employees. The total number of employees covered by the 555 certified cases increased to 17,043 from 14,272 in 1982-83.

Improvements were made for the second consecutive year in the time taken by the Board to process applications in which certification was granted. A median time of 22 calendar days was required to complete the 555 certified cases from receipt to disposition, compared to 23 days in 1982-83. For non-construction certifications the median time was 22 days, compared to 24 days in 1982-83, and for construction certifications the median time was 15 days, compared to 17 days in 1982-83.

Ninety-one percent of the 555 certified cases were disposed of in 84 days (3 months) or less, 83 percent took 56 days (2 months) or less, 60 percent required 28 days (one month) or less, and 47 percent were processed in 21 days (3 weeks) or less. Twenty-three cases required longer than 168 days (6 months) to process, compared to 14 cases in 1982-83.

### **Termination of Bargaining Rights**

In 1983-84, the Board received 124 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions, 9 more than in 1982-83. In addition, 25 cases were carried over from 1982-83.

Of the total cases processed bargaining rights were terminated in 68 cases, 39 cases were dismissed, 10 were withdrawn, proceedings were terminated or adjourned sine die in 4 cases, and 28 cases were pending at March 31, 1984.

Unions lost the right to represent 1,357 employees in the 68 cases in which termination was granted, but retained bargaining rights for 1,114 employees in the 49 cases that were either dismissed or withdrawn.

Of the 107 cases that were either granted or dismissed, dispositions in 45 were based on the results of representation votes. A total of 1,013 employees were eligible to vote in the 47 elections that were held, of whom 909 or 90 percent cast ballots. Of those who cast ballots, 203 voted for continued representation by unions and 690 voted against.

### **Declaration of Successor Trade Union**

In 1983-84, the Board dealt with 22 applications for declarations under section 62 of the Act, on the bargaining rights of successor trade unions resulting from a union merger or transfer of jurisdiction.

Affirmative declarations were issued by the Board in 18 cases, one case was dismissed, and three were pending at March 31, 1984.



### **Declaration of Successor or Common Employer**

In 1983-84, the Board dealt with 200 applications for declarations under section 63 of the Act, on the bargaining rights of trade unions at successor employers resulting from a business role, or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the Board in 13 cases, 75 cases were either settled or withdrawn by the parties, 24 cases were dismissed, proceedings were terminated and adjourned sine die in 36 cases, and 52 cases were pending at March 31, 1984.

### **Accreditation of Employer Organizations**

One application was processed under sections 125 through 127 of the Act for accreditation of employer organizations as bargaining agents of employers in the construction industry. The case was pending at March 31, 1984.

### **Declaration and Direction of Unlawful Strike**

In 1983-84, the Board received one case seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. The case was pending at March 31, 1984.

Thirty applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 7 cases, 5 cases were dismissed, 8 were withdrawn or settled, proceedings were terminated or adjourned sine die in 8 cases, and 2 cases were pending at March 31, 1984.

Twenty-seven applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. Directions were issued in 2 cases, 18 were withdrawn or settled, and proceedings were terminated or adjourned sine die in 7 cases.

### **Declaration and Direction of Unlawful Lock-out**

Seven applications were processed, in 1983-84, seeking declaration under section 93 of the Act against alleged unlawful lock-out by construction employers. One case was dismissed, one was withdrawn, proceedings were terminated in one case, and 4 cases were pending at March 31, 1984.

Nine applications were also processed in seeking directions under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. A declaration was issued in one case, 3 cases were withdrawn or settled, and five were pending at March 31, 1984.

### **Complaints of Contravention of Act**

Complaints alleging contraventions of the Act may be filed with the Board for processing under section 89 of the Act. In handling these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

In 1983-84, the Board received 872 section 89 complaints, an increase of 20 percent over the 724 filed in 1982-83. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees for union activity in violation of sections 64 and 66 of the Act, illegal changes in wages and working conditions contrary to section 79, and failure to bargain in good faith under section 15. These charges were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

In addition to the complaints received, 113 cases were carried over from 1982-83. Of the 985 total processed, 787 were disposed of, proceedings were adjourned sine die in 45 cases, and 153 cases were pending at March 31, 1984.

In 592 or 75 percent of the 787 dispositions, voluntary settlements and withdrawal of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 58 cases, 117 cases were dismissed, and proceedings were terminated in the remaining 20 cases.

In the settlements secured by labour relations officers compensation amounting to about \$314,700 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 58 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay full compensation to 95 employees for wages and benefits lost in a specified period, fifty of the employees were also ordered reinstated. An additional five employees were reinstated but received no monetary award.

In addition, employers in 28 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 14 other cases.

### **Construction Industry Grievances**

Grievances over alleged violation of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 124 of the Act. As with complaints of contraventions of the Act, the Board emphasizes voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

In 1983-84, the Board received 824 cases under section 124, a decrease of one percent from the 831 filed in 1982-83. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and deduction of union dues, and alleged violation of the sub-contracting and hiring arrangements in the collective agreement.

In addition to the cases received, 84 were carried over from 1982-83. Of the 908 total processed, 732 were disposed of, proceedings were adjourned sine die in 99 cases, and 77 cases were pending at March 31, 1984.

In 654 or 89 percent of the 732 dispositions, voluntary settlements and withdrawal of the grievance were obtained by labour relations officers (Table 4), awards were made by the Board in 45 cases, 20 cases were dismissed, and proceedings were terminated in the remaining 13 cases.

Payments totalling about \$1,620,500 were recovered for unions and employees in the cases settled by labour relations officers and those in which Board awards were made.

## **MISCELLANEOUS APPLICATIONS AND COMPLAINTS**

### **Right of Access**

In 1983-84, the Board dealt with nine applications in which the union sought access to the employer's property under section 11 of the Act. Four cases were settled, one case was withdrawn, and 4 cases were pending at March 31, 1984.

### **Religious Exemption**

Five applications were processed under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemption was granted in 2 cases and 3 cases were dismissed.

### **Early Termination of Collective Agreements**

Thirty-one applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 26 cases, one case was dismissed, and 4 were pending at March 31, 1984.

### **Union Financial Statements**

Thirteen complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements of the union's affairs. One case was dismissed, 4 were settled or withdrawn, proceedings were terminated in 4 cases, and 4 were pending at March 31, 1984.

### **Jurisdictional Disputes**

Thirty-five complaints were dealt with under section 91 of the Act, involving union work jurisdiction. Assignment of the work in dispute was made by the Board in 3 cases, 4 cases were dismissed, 7 were settled or withdrawn, proceedings were terminated or adjourned sine die in 10 cases, and 11 cases were pending at March 31, 1984.

### **Determination of Employee Status**

The Board dealt with 65 applications under section 106(2) of the Act, seeking decisions on the status of the individuals as employees under the Act. Twenty-nine cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by the Board in 8 cases, in which 34 of the 42 persons in dispute were found to be employees under the Act. Four cases were dismissed, proceedings were terminated or adjourned sine die in 7 cases, and 17 cases were pending at March 31, 1984.

### **Referrals by Minister of Labour**

In 1983-84, the Board dealt with 10 cases referred by the Minister under section 107 of the Act for opinions on questions related to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under section 44 or 45. Determinations were made in 3 cases, in which the Board declared the Minister's authority to appoint a conciliation officer;

one case was withdrawn, proceedings were terminated in two cases; and 4 cases were pending at March 31, 1984.

One case was referred to the Board by the Minister under section 139(4) of the Act, concerning the designations of the employee and the employer agencies in a bargaining relationship in the industrial, commercial and institutional sector of the construction industry. The case was pending at March 31, 1984.

### **Trusteeship Reports**

Three statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

### **Occupational Health and Safety Act**

In 1983-84, the Board received 32 complaints under section 24 of the *Occupational Health and Safety Act*, alleging wrongful discipline or discharge of employees for acting in compliance with the Act. Six cases were carried over from 1982-83.

Of the total cases processed, 22 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4), 3 were granted and 3 were dismissed by the Board, and the remaining 9 were pending at March 31, 1984.

### **Colleges Collective Bargaining Act**

Four complaints were dealt with under section 78 of the *Colleges Collective Bargaining Act*, alleging contraventions of the Act. Three cases were withdrawn or settled, and one was pending at March 31, 1984.

Two applications were dealt with under section 82 for decisions on the status of individuals as employees under the Act. Both were pending at March 31, 1984.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt by the Board are included in Table 1.



## VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

*The Ontario Labour Relations Board Monthly Report*, a monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

*A Guide to the Ontario Labour Relations Act*, a booklet explaining in laymen's terms the provisions of the *Labour Relations Act* and the Board's practices. This publication is revised periodically to reflect current law and Board practices. The Guide is also available in French.

*Monthly Highlights*, a publication in leaflet form containing brief summaries of significant Board decisions on a monthly basis. This publication also contains Board notices of interest to the industrial relations community and information relating to new appointments, retirements and other internal developments.

*Pamphlets*, the two pamphlets published by the Board to date ("Rights of Employees, Employers, and Trade Unions" and "Certification by the Ontario Labour Relations Board") have been well received. These pamphlets have been translated into French, Italian and Portuguese. During the year under review the Board published a third pamphlet entitled, "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board." This pamphlet describes unfair labour practice proceedings before the Board and contains instructions on filling out form 58.

Last year, the Board published a revised construction industry map depicting the geographic areas in the province used by the Board in certification applications relating to the construction industry.

All of the Board's publications may be obtained by calling; writing, or visiting the Board's offices.

## **IX            STAFF AND BUDGET**

At the end of the fiscal year 1983-84, the Board employed a total of 96 persons on a full time basis. The Board has two types of employees. The Chairman, Alternate-Chairman, Vice-Chairmen and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$4,505,300.00.

## X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1983-84.

- Table 1: Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1983-84
- Table 2: Applications and Complaints Received and Disposed of, Fiscal Years 1978-79 to 1983-84
- Table 3: Labour Relations Officer Activity in Cases Processed, Fiscal Year 1983-84
- Table 4: Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1983-84
- Table 5: Results of Representation Votes Conducted, Fiscal Year 1983-84
- Table 6: Results of Representation Votes in Cases Disposed of, Fiscal Year 1983-84
- Table 7: Time Required to Process Applications and Complaints Disposed of, by Major Type of Case, Fiscal Year 1983-84
- Table 8: Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1983-84
- Table 9: Industry Distribution of Certification Applications Received and Disposed of, Fiscal Year 1983-84
- Table 10: Size of Bargaining Units in Certification Applications Granted, Fiscal Year 1983-84
- Table 11: Time Required to Process Certification Applications Granted, Fiscal Year 1983-84

Table 1

**Total Applications and Complaints Received, Disposed of and Pending  
Fiscal Year 1983-84**

Type of Case	Caseload		Disposed of Fiscal Year 1983-84										Pending March 31, '84
	Total April 1, 83	Pending April 1, 83	Received Fiscal Year 1983-84	Total Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die	213	530	1,048	534
<b>Total</b>	<b>3,544</b>	<b>409</b>	<b>3,135</b>	<b>2,797</b>	<b>812</b>	<b>343</b>	<b>64</b>	<b>530</b>	<b>1,048</b>	<b>213</b>	<b>530</b>	<b>1,048</b>	<b>534</b>
Certification of bargaining agents	979	108	871	817	555	117	3	142	-	11			151
Declaration of Termination of Bargaining Rights	149	25	124	119	68	39	2	10	-	2			28
Declaration of Successor Trade Union	22	-	22	19	18	1	-	-	-	-			3
Declaration of Successor Employer or Common Employer Status	200	26	174	118	13	24	6	22	53	30			52
Accreditation	1	-	1	-	-	-	-	-	-	-			1
Declaration of Unlawful Strike	1	-	1	-	-	-	-	-	-	-			1
Declaration of Unlawful Lockout	7	1	6	3	-	1	1	1	-	-			4
Direction respecting Unlawful Strike	57	2	55	43	9	5	3	11	15	12			2
Direction respecting Unlawful Lockout	9	1	8	4	1	-	-	2	1	-			5
Consent to Prosecute	19	4	15	12	-	3	2	7	-	4			3
Contravention of Act	985	113	872	787	58	117	20	188	404	45			153
Right to Access	9	1	8	5	-	-	-	1	4	-			4
Exemption from Union Security Provision in Collective Agreement	5	1	4	5	2	3	-	-	-	-			-
Early Termination of Collective Agreement	31	5	26	27	26	1	-	-	-	-			4
Trade Union Financial Statement	13	7	6	9	-	1	4	2	2	-			4
Jurisdictional Dispute	35	15	20	20	3	4	6	7	-	4			11
Referral on Employee Status	65	9	56	43	8	4	2	15	14	5			17



Table 1 (Cont'd.)

**Total Applications and Complaints Received, Disposed of and Pending  
Fiscal Year 1983-84**

Referral from Minister on Appointment of Conciliation Officer or Arbitrator	10	1	9	6	3	-	2	1	-	-	4
Referral of Construction Industry Grievance	908	84	824	732	45	20	13	112	542	99	77
Referral from Minister on Construction Bargaining Agency	1	-	1	-	-	-	-	-	-	-	1
Complaint under <i>Occupational Health and Safety Act</i>	38	6	32	28	3	3	-	9	13	1	9

\* Includes cases in which a request was granted or a determination made by the Board.

Table 2

**Applications and Complaints Received and Disposed of  
Fiscal Years 1979-80 to 1983-84**

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1979-80	1980-81	1981-82	1982-83	1983-84	Total	1979-80	1980-81	1981-82	1982-83	1983-84
<b>Total</b>	<b>13,964</b>	<b>2,482</b>	<b>2,836</b>	<b>2,749</b>	<b>2,762</b>	<b>3,135</b>	<b>12,809</b>	<b>2,248</b>	<b>2,711</b>	<b>2,608</b>	<b>2,445</b>	<b>2,797</b>
Certification of bargaining agents	5,006	1,136	1,152	1,089	758	871	4,966	1,103	1,178	1,101	767	817
Declaration of termination of bargaining rights	511	70	104	98	115	124	500	72	111	78	120	119
Declaration of successor trade union or employer	224	50	55	50	47	22	214	55	54	35	51	19
Declaration of common employer status	318	30	37	36	41	174	236	28	29	30	31	118
Accreditation	8	3	2	1	1	1	11	3	5	-	3	-
Declaration of unlawful strike or lockout	35	15	6	4	3	7	26	11	7	3	2	3
Directions respecting unlawful strike or lockout	352	78	76	59	76	63	240	51	47	34	61	47
Consent to prosecute	120	48	22	17	18	15	112	50	23	10	17	12
Contravention of Act	3,548	607	705	640	724	872	3,309	522	704	622	674	787
Referral of construction industry grievance	3,044	321	517	551	831	824	2,473	227	421	516	577	732
Miscellaneous	798	124	160	204	148	162	722	126	132	179	142	143

Table 3

**Labour Relations Officer Activity in Cases Processed\***  
**Fiscal Year 1983-84**

Type of Case	Cases in Which Activity Completed						
	Total Cases Assigned	Settled			Referred to Board	Sine Die	Pending
		Total	Number	Percent			
<b>Total</b>	<b>2,032</b>	<b>1,657</b>	<b>1,402</b>	<b>84.6</b>	<b>255</b>	<b>100</b>	<b>276</b>
Certification							
Interim certificate	49	32	26	81.3	6	2	16
Pre-hearing application	72	67	56	83.6	11	—	5
Other application	338	336	333	99.1	3	—	2
Contravention of Act	743	650	493	75.8	157	38	55
Construction industry grievance	763	524	460	87.8	64	59	180
Employee status	37	21	13	61.9	8	—	16
Occupational Health and Safety Act	30	27	21	77.8	6	1	2

\* Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.

Table 4

**Labour Relations Officer Settlements in Cases Disposed of\***  
**Fiscal Year 1983-84**

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
<b>Total</b>	<b>1,590</b>	<b>1,297</b>	<b>81.6</b>
Contravention of Act	787	592	75.2
Construction industry grievance	732	654	89.3
Employee status	43	29	67.4
Occupational Health and Safety Act	28	22	78.6

\* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.



Table 5

**Results of Representation Votes Conducted\***  
**Fiscal Year 1983-84**

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
<b>Total</b>	<b>182</b>	<b>10,137</b>	<b>8,418</b>	<b>4,245</b>
Certification	138	9,155	7,531	4,049
Pre-hearing cases				
One union	35	3,160	2,680	1,301
Two unions	20	1,881	1,578	882
Three unions	1	328	292	172
Construction cases				
One union	6	77	69	36
Two unions	1	9	7	1
Regular cases				
One union	62	2,812	2,159	993
Two unions	12	772	649	589
Two unions with "No Union" Choice	1	116	97	75
Termination of Bargaining Rights	44	982	887	196

\* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

Table 6

**Results of Representation Votes in Cases Disposed of\***  
**Fiscal Year 1983-84**

Type of Case	Number of Votes			Eligible Voters			All Ballots Cast			Ballots Cast in Favour of Unions		
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
<b>Total</b>	<b>189</b>	<b>76</b>	<b>113</b>	<b>10,241</b>	<b>5,037</b>	<b>5,204</b>	<b>8,417</b>	<b>3,998</b>	<b>4,419</b>	<b>4,024</b>	<b>2,658</b>	<b>1,366</b>
Certification	142	73	69	9,228	4,937	4,291	7,508	3,905	3,603	3,821	2,605	1,216
Pre-hearing cases												
One union	37	23	14	3,487	2,008	1,479	2,923	1,629	1,294	1,412	1,027	385
Two unions	22	16	6	1,983	1,096	887	1,671	937	734	935	675	260
Three unions	1	1	-	328	328	-	292	292	-	169	169	-
Construction cases												
One union	5	1	4	71	47	24	64	42	22	34	31	3
Two unions	4	2	2	102	40	62	50	23	27	26	17	9
Regular cases												
One union	63	21	42	2,786	961	1,825	2,116	600	1,516	961	405	556
Two unions	10	9	1	471	457	14	392	382	10	284	281	3
Termination of Bargaining Rights	47	3	44	1,013	100	913	909	93	816	203	53	150

\* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

Table 7

**Time Required to Process Applications and Complaints Disposed of, by Major Type of Case  
Fiscal Year 1983-84**

Time Taken (Calendar Days)	All Cases			Certification Cases			Section 89 Cases			Section 124 Cases			All Other Cases		
	Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent	
<b>Total</b>	<b>2,797</b>	<b>-</b>	<b>817</b>	<b>-</b>	<b>787</b>	<b>-</b>	<b>732</b>	<b>-</b>	<b>461</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Under 8 days	91	3.3	9	1.1	18	2.3	35	4.8	29	6.3					
8-14 days	446	19.2	105	14.0	71	11.3	239	37.4	31	13.0					
15-21 days	578	39.9	242	43.6	82	21.7	215	66.8	39	21.5					
22-28 days	279	49.8	99	55.7	109	35.6	43	72.7	28	27.5					
29-35 days	283	60.0	52	62.1	153	55.0	31	76.9	47	37.7					
36-42 days	197	67.0	73	71.0	57	62.3	25	80.3	42	46.9					
43-49 days	119	71.3	43	76.3	32	66.3	17	82.7	27	52.7					
50-56 days	84	74.3	20	78.7	18	68.6	18	85.1	28	58.8					
57-63 days	82	77.2	24	81.6	25	71.8	12	86.7	21	63.3					
64-70 days	69	79.7	19	84.0	24	74.8	7	87.7	19	67.5					
71-77 days	35	80.9	10	85.2	8	75.9	5	88.4	12	70.1					
78-84 days	44	82.5	14	86.9	16	77.9	7	89.3	7	71.6					
85-91 days	47	84.2	9	88.0	18	80.2	7	90.3	13	74.4					
92-98 days	37	85.5	10	89.2	12	81.7	8	91.4	7	75.9					
99-105 days	31	86.6	6	90.0	13	83.4	5	92.1	7	77.4					
106-126 days	93	89.9	22	92.7	33	87.5	14	94.0	24	82.6					
127-147 days	48	91.6	9	93.8	18	89.8	11	95.5	10	84.8					
148-168 days	39	93.0	8	94.7	8	90.9	5	96.2	18	88.7					
Over 168 days	195	100.0	43	100.0	72	100.0	28	100.0	52	100.0					

Table 8

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1983-84**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Unions</b>	<b>871</b>	<b>817</b>	<b>555</b>	<b>120</b>	<b>142</b>
<b>CLC* Affiliates</b>	<b>431</b>	<b>401</b>	<b>288</b>	<b>57</b>	<b>56</b>
Aluminium Brick and Glass Workers	—	1	1	—	—
Auto Workers	30	29	25	2	2
Bakery and Tobacco Workers	2	2	1	1	—
Broadcast Employees	1	1	1	—	—
Canadian Brewery Workers	15	15	11	2	2
Canadian Paperworkers	5	5	3	2	—
Canadian Public Employees (CUPE)	63	54	39	6	9
Clothing and Textile Workers	4	3	3	—	—
Communications & Electronics	3	4	3	1	—
Electrical Workers (UE)	7	9	5	4	—
Energy and Chemical Workers	15	16	12	4	—
Food and Commercial Workers	58	40	29	7	4
Glass, Pottery & Plastic Workers	—	1	1	—	—
Graphic Communications Union	10	9	9	—	—
Hotel Employees	23	26	14	5	7
Ladies Garment Workers	4	7	7	—	—
Leather & Plastic Workers	2	—	—	—	—
Machinists	4	3	2	1	—
Marine Officers	1	1	1	—	—
Merchant Guild Service	1	1	1	—	—
Molders	4	3	2	1	—
Newspaper Guild	2	2	2	—	—
Novelty Workers	4	4	3	—	1
Office and Professional Employees	1	1	1	—	—
Ontario Public Service Employees	13	17	16	1	—
Public Service Alliance	5	3	2	—	1
Railway, Transport and General Workers	2	2	—	2	—



Table 8 (Cont'd.)

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**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1983-84**


---

Retail Wholesale Employees	34	31	22	2	7
Rubber Workers	1	1	1	—	—
Seafarers	2	2	1	1	—
Service Employees International	57	49	36	4	9
Theatrical Stage Employees	7	8	3	—	5
Typographical Union	5	6	3	1	2
United Garment Workers	2	2	1	—	1
United Paperworkers	3	3	1	—	2
United Steelworkers	35	33	20	9	4
United Textile Workers	—	1	1	—	—
Upholsterers	2	2	2	—	—
Utility Workers	2	2	2	—	—
Woodworkers	2	2	1	1	—

---

\* Canadian Labour Congress

Table 8 (Cont'd.)

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1983-84**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>Non-CLC Affiliates</b>	<b>440</b>	<b>416</b>	<b>267</b>	<b>63</b>	<b>86</b>
Aerospace Communications Employees	—	1	—	—	1
Allied Health Professionals	2	2	1	—	1
Boilermakers*	4	5	4	1	—
Bricklayers International*	14	14	10	2	2
Carpenters*	84	82	49	15	18
Canadian Operating Engineers	10	8	2	4	2
Christian Labour Association	9	6	4	1	1
Electrical Workers (IBEW)*	14	9	6	—	3
Food and Service Workers	2	2	1	1	—
Guards Association	1	1	1	—	—
Headwear Workers	3	3	3	—	—
Independent Local Union	28	29	19	4	6
International Operating Engineers*	49	46	28	9	9
Labourers*	94	89	52	10	27
National Council of Canadian Labour	1	1	1	—	—
Ontario Nurses Association	10	8	8	—	—
Ontario Secondary School Teachers	1	—	—	—	—
Painters*	11	11	9	—	2
Plant Guard Workers	3	3	2	—	1
Plasterers*	—	1	—	1	—
Plumbers*	14	10	5	3	2
Sheet Metal Workers*	20	19	15	2	2
Structural Iron Workers*	13	13	10	1	2
Teamsters	37	34	27	4	3
Textile Processors	16	19	10	5	4

\* These construction unions were reported as CLC (Canadian Labour Congress) affiliates in the 1981-82 report. In April 1982, following suspension by the Congress of its 12 building trades affiliates, the Asbestos Workers, Boilermakers, Bricklayers, Electrical Workers (IBEW), International Operating Engineers, Painters, Plasterers, Plumbers and Sheet Metal Workers joined with the Elevator Constructors to form the Canadian Federation of Labour. The Carpenters, Labourers, and Structural Iron Workers have not joined the Federation.

Table 9

**Industry Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1983-84**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Industries</b>	<b>871</b>	<b>817</b>	<b>555</b>	<b>120</b>	<b>142</b>
<b>Manufacturing</b>	<b>209</b>	<b>211</b>	<b>160</b>	<b>35</b>	<b>16</b>
Food, beverages	36	34	22	9	3
Tobacco products	—	—	—	—	—
Rubber, plastic products	9	7	5	2	—
Leather industries	2	2	2	—	—
Textile mill products	4	4	4	—	—
Knitting mills	—	—	—	—	—
Clothing industries	11	13	12	1	—
Wood products	14	14	11	2	1
Furniture, fixtures	7	7	6	1	—
Paper, allied products	9	9	5	2	2
Printing, publishing	15	15	11	1	3
Primary metal industries	6	8	7	1	—
Metal fabricating industries	31	30	23	4	3
Machinery, except electrical	5	4	2	2	—
Transportation equipment	17	16	15	—	1
Electrical products	7	9	6	3	—
Non-metallic mineral products	10	12	8	4	—
Petroleum, coal products	—	—	—	—	—
Chemical, chemical products	14	14	11	1	2
Miscellaneous manufacturing	12	13	10	2	1
<b>Non-Manufacturing</b>	<b>662</b>	<b>606</b>	<b>395</b>	<b>85</b>	<b>126</b>
Agriculture	—	—	—	—	—
Forestry	—	—	—	—	—
Mining, quarrying	7	6	5	—	1
Construction	254	248	153	37	58
Transportation	26	22	18	2	2
Storage	1	1	1	—	—
Communications	1	1	—	—	1
Electric, gas, water	8	5	4	—	1
Wholesale trade	22	23	14	4	5
Retail trade	35	36	26	3	7
Finance, insurance	4	2	2	—	—
Real Estate	23	18	9	6	3
Education, related services	25	19	12	5	2
Health, welfare services	109	105	79	9	17
Religious organizations	1	—	—	—	—
Recreational services	16	12	6	—	6
Business services	7	6	4	1	1
Personal services	12	10	8	1	1
Accommodation, food services	53	40	20	9	11
Miscellaneous service	38	36	24	4	8
Local government	20	16	10	4	2

Table 10

**Size of Bargaining Units in Certification Applications Granted**  
**Fiscal Year 1983-84**

Size of Bargaining Unit (Number of Employees)	Total		Construction		Non-Construction	
	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees
<b>Total, all sizes</b>	<b>555</b>	<b>17,043</b>	<b>152</b>	<b>946</b>	<b>403</b>	<b>16,097</b>
2-9 employees	228	1,037	129	501	99	536
10-19 employees	104	1,417	18	246	86	1,171
20-39 employees	95	2,671	2	43	93	2,628
40-99 employees	90	5,071	3	156	87	4,915
100-199 employees	29	3,648	–	–	29	3,648
200-499 employees	7	1,727	–	–	7	1,727
500 employees or more	2	1,472	–	–	2	1,472

\* Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 153 certified construction industry applications shown in Table 9, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.



**Table 11**
**Time Required to Process Certification Applications Granted\***  
**Fiscal Year 1983-84**

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
<b>Total</b>	<b>555</b>	<b>—</b>	<b>403</b>	<b>—</b>	<b>152</b>	<b>—</b>
Under 8 days	—	—	—	—	—	—
8-14 days	75	13.5	28	6.9	47	30.9
15-21 days	184	46.7	147	43.4	37	55.3
22-28 days	73	59.8	62	58.8	11	62.5
29-35 days	41	67.2	30	66.3	11	69.7
36-42 days	49	76.0	40	76.2	9	75.7
43-49 days	25	80.5	17	80.4	8	80.9
50-56 days	13	82.9	9	82.6	4	83.6
57-63 days	16	85.8	15	86.4	1	84.2
64-70 days	15	88.5	11	89.1	4	86.8
71-77 days	4	89.2	2	89.6	2	88.2
78-84 days	10	91.0	7	91.3	3	90.1
85-91 days	5	91.9	5	92.6	—	—
92-98 days	2	92.3	2	93.1	—	—
99-105 days	4	93.0	3	93.8	1	90.8
106-126 days	7	94.2	6	95.3	1	91.4
127-147 days	5	95.1	4	96.3	1	92.1
148-168 days	4	95.9	3	97.0	1	92.8
169 days and over	23	100.0	12	100.0	11	100.0

\* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.



*Ontario Labour Relations Board,  
400 University Avenue,  
Toronto, Ontario*

ISSN 0711-849X





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# ONTARIO LABOUR RELATIONS BOARD

# ANNUAL REPORT 1984-85



## ONTARIO LABOUR RELATIONS BOARD

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<i>Alternate Chairman</i>	I.C.A. SPRINGATE
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*Registrar and Chief  
Administrative Officer*

D.K. AYNSLEY

*Board Solicitors*

N.V. DISSANAYAKE, R.J. HERMAN,  
AND F.W. McINTOSH-JANIS

**ONTARIO  
LABOUR RELATIONS BOARD**

**ANNUAL REPORT  
1984-85**







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Ontario  
Labour Relations  
Board

Commission  
des relations  
de travail de l'Ontario

Office of the  
Chairman

Bureau du  
président

400 University Avenue  
Toronto, Ontario  
M7A 1V4  
416/965-4193

The Honourable William Wrye,  
Minister of Labour,  
400 University Avenue,  
Toronto, Ontario,  
M7A 1T7.

Dear Minister:

It is my pleasure to provide to you the fifth  
Annual Report of the Ontario Labour Relations  
Board for the period commencing April 1, 1984  
to March 31, 1985.

Sincerely,

Judge Rosalie S. Abella,  
Chairman.

## CHAIRMAN'S MESSAGE

Despite a significant turnover in Board personnel this year and thanks largely to the immeasurable contribution of Don Aynsley, the Board's Registrar, as well as to the redoubtable commitment on the part of the Board's Vice-Chairmen and Members and Labour Relations Officers, the Ontario Labour Relations Board experienced an exceptionally productive year. With the assistance of a new Manager of Administration (Virginia Robeson), a new Alternate Chairman (Ian Springate), a Board Solicitor (Robert Herman) and Manager of Field Services (Jack MacDonald), revised administrative measures were introduced to maintain the Board's ability to respond effectively to the pronounced increase in caseload. Through the creative and complex analysis in the jurisprudence of the Vice-Chairmen and Board Members, many new parameters in labour relations were delineated and many old ones clarified. That they were able so regularly to produce decisions of such exemplary quality, despite the overwhelming time burdens the Board's personnel shortages imposed on them, reflects the calibre of their professionalism and talent.

As is the case every year, the Board is both deeply indebted to and proud of the work of its Labour Relations Officers. As the Board's caseload increased dramatically, so did the pressure on these officers. Yet as the figures contained in the Annual Report show, their ability to effect settlements remained consistently and impressively high. If anything, their indispensability to the Board has increased. The Board personnel and support staff have been supremely hardworking, and dedicated to serving the Board and its public. The three Board solicitors and the articling students have inexhaustibly supplied advice and research to help in the formulation of legal, procedural, policy and administrative directions. The library retains its excellent reputation for a comprehensive and up-to-date research and information base.

We all look forward to continuing to provide a fair, effective and accessible tribunal to the labour relations community in the coming year and to the benefit of this community's observations and assistance in the achievement of this objective.

# I INTRODUCTION

The Ontario Labour Relations Board commenced publication of its own Annual Report in the fiscal year 1980-81. This issue covers the fiscal year April 1, 1984 to March 31, 1985.

The report contains uptodate information on the organizational structure and administrative developments of interest to the public and notes changes in personnel of the Board. As in previous years, this issue provides a statistical summary and analysis of the work-load carried by the Board during the fiscal year under review. Detailed statistical tables are provided on several aspects of the Board's function.

This report contains a section highlighting some of the significant decisions of the Board issued during the year. A brief description of every Board matter that was subject to review by the courts during the year is provided. Since many of these court decisions are unreported, the summaries in the Board's Annual Report have been helpful to the practising bar. The report continues to provide a legislative history of the *Labour Relations Act* and notes the amendments to the Act that were passed during the fiscal year.



## II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of a public hearing before a select committee of the Provincial Legislative Assembly. Although the establishment of a “Labour Court” was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee’s report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

“... the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its ‘judicial’ role.” (MacDowell, R.O., “Law and Practice before the Ontario Labour Relations Board, (1978), 1 Advocate’s Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today — management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers — something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when disputes arise in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944). In his book, *The Ontario Labour Court 1943-44*, (Queen’s University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court’s early demise: —

“... the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944.”

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a war time move by the Federal Government to centralize labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over "property and civil rights." (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5)

The Act was subsequently amended so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, "opt in" to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations "in the same form and to the same effect as that ... Act which may be passed by the Parliament of Canada at the session currently in progress ..." This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board's role was fairly limited. There was no enforcement mechanism at the Board's disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lockout unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary to the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board's power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute

under the Act was remedial only in a limited way. Of some significance during the fifties was the Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

*The Labour Relations Amendment Act, 1960*, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario*, May, 1976). (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31). Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, The Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation." This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty



has been extended to cover referral of persons to work. The Board also received the power to make "cease and desist" orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and be enforceable as orders of the Court.

A major increase in the Board's remedial powers under the *Labour Relations Act* occurred in 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, the *Labour Relations Amendment Act, 1980* (No. 2), S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer. In June of 1983, the *Labour Relations Amendment Act, 1983*, S.O. 1983, c. 42 became law. It introduced into the Act section 71a, which prohibits strike related misconduct and the engaging of or acting as, a professional strike-breaker. To date the Board has not been called upon to interpret or apply section 71a.

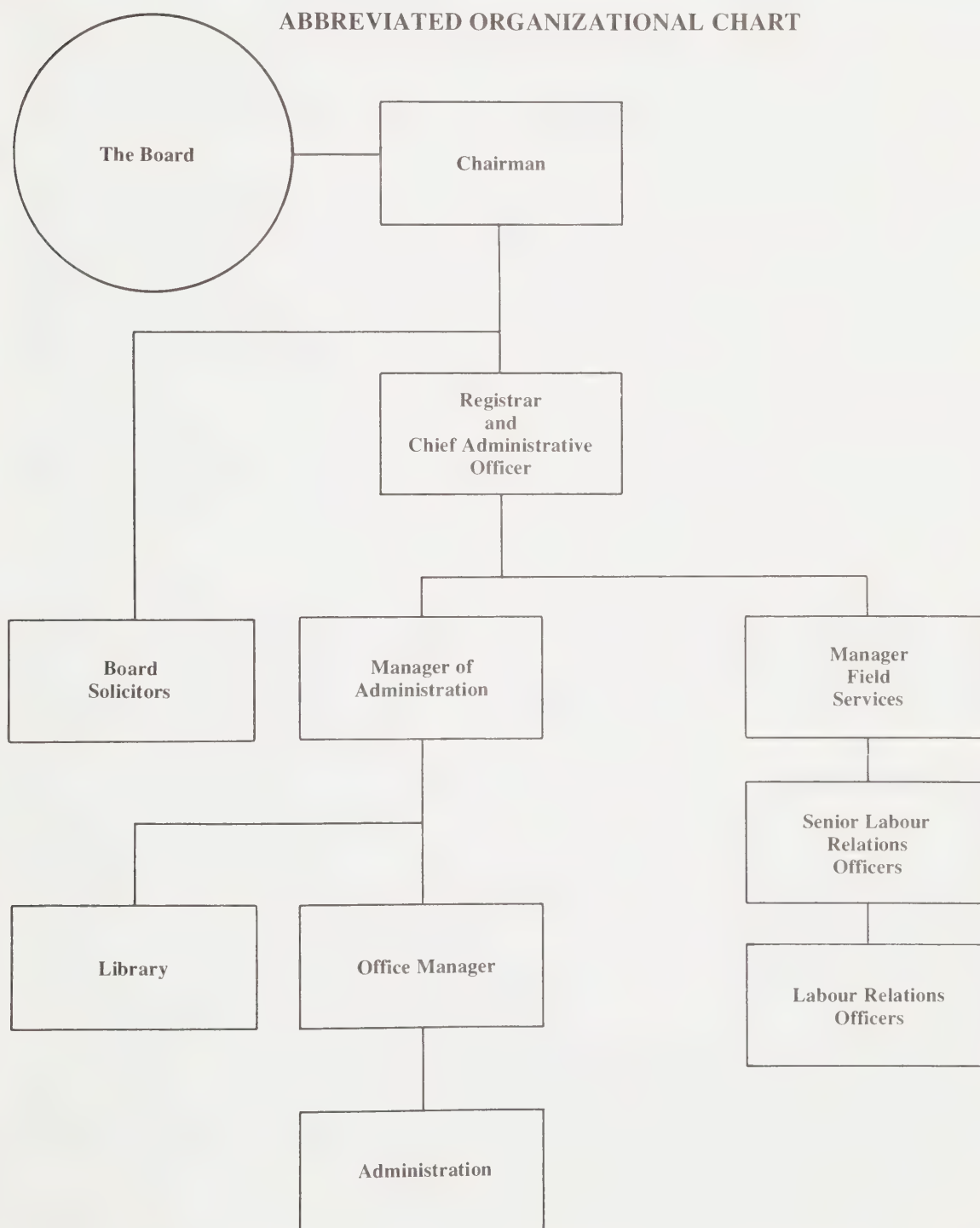
During the year under review, the *Labour Relations Amendment Act, 1984*, S.O. 1984, c. 34 was enacted. This Act, which received Royal Assent on June 27, 1984, deals with several areas. It gives the Board explicit jurisdiction to deal with illegal picketing or threats of illegal picketing and permits a party affected by illegal picketing to seek relief through the expedited procedures in sections 92 and 135, rather than the more cumbersome process under section 89. The Act also permits the Board to respond in an expedited fashion to illegal agreements or arrangements which affect the industrial, commercial and institutional section of the construction industry. It further establishes an appropriate voting constituency for strike, lockout and ratification votes in that sector and provides a procedure for complaints relating to voter eligibility to be filed with the Minister of Labour. The new amendment also eliminates the 14 day waiting period before an arbitration award which is not complied with may be filed in court for purposes of enforcement.



### III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:

ABBREVIATED ORGANIZATIONAL CHART



## IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act*, R.S.O. 1980, c. 228, as follows:

“... it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chairman and an Alternate Chairman, several Vice-Chairmen and a number of Members representative of labour and management respectively in equal numbers. At the end of the fiscal year the Board consisted of the Chairman, Alternate Chairman, 10 full time Vice-Chairmen, 4 part-time Vice-Chairmen and 32 Board Members, 10 full-time and 22 part-time. These appointments are made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the Act, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not subject to appeal and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report from time to time. During the year under review a new practice note dealing with applications for reconsideration was issued. (Practice Note No. 17, dated March 1, 1985.)

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 464. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. A distinct piece of legislation, the *Hospital Labour Disputes Arbitration Act*, stipulates special laws that govern

labour relations of hospital employees, particularly with respect to the resolution of collective bargaining disputes and the *Successor Rights (Crown Transfers) Act*, R.S.O. 1980, c. 489 provides for application to the Board where there is a transfer of an undertaking from the crown to an employer and vice versa. The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. A similar jurisdiction is conferred on the Board by section 134b of the *Environmental Protection Act*, R.S.O. 1980, c. 141, proclaimed in November 1983 by S.O. 1983, c. 52, s. 22. During the year under review the Board was required on several occasions to determine the impact of the *Canadian Charter of Rights and Freedoms* on the rights of parties under the *Labour Relations Act*.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Legal Services.

### **(a) ADMINISTRATIVE DIVISION**

The Registrar and Chief Administrative Officer is the senior administrative official of the Board. He is responsible for supervising the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings, the holding of votes or particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload within the resources allocated to it underpins much of its contribution to labour relations harmony in this province.

The Manager of Administration and the Manager of Field Services report directly to the Registrar and Chief Administrative Officer. The former manages the day-to-day administrative operation and the latter the field services. An Administrative Committee comprised of the Chairman, Alternate Chairman, Registrar and Chief Administrative Officer, Manager of Administration, Manager Field Services and a Solicitor meets regularly to discuss all aspects of Board administration and management.

The administrative division of the Board includes: office management, case monitoring, and library services.

#### **1. Office Management**

An administrative support staff of approximately 60, headed by an Office Manager who reports to the Manager of Administration and a Senior Clerical Supervisor, process all applications received by the Board.

#### **2. Case Monitoring**

The Board continues to rely on its computerized case monitoring system. Data on each case are coded on a day-to-day basis as the status changes. Reports are then issued on a weekly and monthly basis on the progress of each proceeding from the filing of applications or complaints to their final disposition.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can lead to increased productivity and better service to the community.

### **3. Library Services**

The Ontario Labour Relations Board Library employs a staff of 3, including a fulltime professional librarian. The Library staff provides research services for the Board and assists other library users.

The Board Library maintains a collection of approximately 1000 texts, 100 journals and 25 case reports in the areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The library has approximately 4000 volumes. The collection includes decisions from other jurisdictions, such as the Canada Labour Relations Board, the U.S. National Labour Relations Board and provincial labour boards from across Canada.

The Library staff maintains a computer index to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, statutes considered, cases cited, date etc. The system also provides a microfiche index to the decisions. It permits Board members and staff prompt and accurate access to previous Board decisions dealing with particular issues under consideration. The Board is the first labour relations tribunal in Canada to develop and implement this type of system. It has been reviewed by officials from a number of labour relations boards and may be used as a model in the development of other computerized retrieval systems.

#### **(b) FIELD SERVICES**

In view of the Board's continuing belief that the interests of parties appearing before it, and labour relations in the province generally, are best served by settlement of disputes by the parties without the need for a formal hearing and adjudication, the Board attempts to make maximum use of its labour relations officers' efforts in this area. Responsibility for the division lies with the Manager of Field Services. In promoting overall efficiency, the manager puts emphasis upon the setting and monitoring of performance standards, case assignments, staff development and maintaining liaison with the Board. He is assisted by three Senior Labour Relations Officers, each of whom is assigned a team of officers. In addition to undertaking their share of the caseload in the field, these Senior Labour Relations Officers are responsible for providing guidance and advice in the handling of particular cases, managing the settlement process on certification days on a rotating basis, and assisting with the performance appraisals of the officers. In addition to the Labour Relations Officers, the Board employs two Returning/Waiver Officers. They conduct representation votes directed by the Board, as well as last offer votes directed by the Minister of Labour. (See Sec. 40 of the Act) They also carry out the Board's programme for waiver of hearings in certification applications.

The Board's field staff continued its excellent record of performance throughout the fiscal year under review. In relation to complaints under the *Labour Relations Act* and the *Occupational Health and Safety Act*, the officers handled a total caseload of 1022 assignments, of which 84.4 percent were settled by the efforts of the officers. The officers handled a total of 827 grievances in the construction industry of which 93.1 percent were settled. Of 281 certification applications



dealt with under the waiver of hearings programme, the officers were successful in 182 or 64.7 percent.

The Alternate Chairman of the Board supervises the activities of the field officers, and along with the Manager of Field Services and a Board Solicitor, meets with the officers on a monthly basis to deal with administrative matters and review Board jurisprudence affecting officers' activity and other policy and legal developments relevant to the officers' work.

### **(c) LEGAL SERVICES**

Legal services to the Board are provided by the Solicitors' Office. This office consists of three Board solicitors, who report directly to the Chairman. The Board also employed four articling students to assist the solicitors in carrying out the functions of the Solicitors' Office.

The Solicitors' Office is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chairman, Vice-Chairman and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Solicitors' Office is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the solicitors. When preparation or revision of practice notes, Board Rules or forms become necessary, the solicitors are responsible for undertaking those tasks.

The solicitors are active in the staff development programme of the Board and a solicitor regularly meets with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, a solicitor prepares written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The solicitors also advise the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Solicitors' Office is the representation of the Board's interest in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, a solicitor, in consultation with the Chairman, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Solicitors' Office is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

The Solicitors' Office is responsible for all of the Board's publications. One of the Board's solicitors is the Editor of the Ontario Labour Relations Board Reports, a monthly series of selected Board decisions which commenced publication in 1944. This series is one of the oldest labour board reports in North America. In addition to reporting Board decisions, each issue of the Reports contains a section listing all of the matters disposed of by the Board in the month in question, including the bargaining unit descriptions, results of representation votes and manner of disposition.

The Solicitors' Office also issues a publication entitled "Monthly Highlights." This publication, which commenced in 1982, contains summaries of significant decisions of the Board issued during the month and other notices and administrative developments of interest to the labour relations community. This publication is sent free of charge to all subscribers to the Ontario Labour Relations Board Reports. The Solicitors' Office is also responsible for periodically revising the publication entitled "A Guide to the Labour Relations Act", which is an explanation in layman's terms, of the significant provisions of the Act. The latest revision took place in October, 1984, to reflect the amendments to the Act.

## MEMBERS OF THE BOARD

At the end of the fiscal year 1984-85, the Board consisted of the following members:

JUDGE ROSALIE S. ABELLA      *Chairman*

Judge Abella assumed office as chairman of the Board on September 19, 1984. After graduating from University of Toronto Law School in 1970, she practised law until her appointment in 1976 as a judge of the Ontario Provincial Court (Family Division). In addition to carrying out her judicial functions, Judge Abella's professional background includes: Member, Ontario Public Service Labour Relations Tribunal, 1975-76; Commissioner, Ontario Human Rights Commission, 1975-80; Member, Premier's Advisory Committee on Confederation, Ontario, 1977-82; Co-Chairman, University of Toronto Academic Discipline Tribunal, 1977-1984; Director, International Commission of Jurists (Canadian Section), 1982; Director, Canadian Institute for the Administration of Justice, 1983; and Chairman, Report on Access to Legal Services by the Disabled, 1983.

In 1983 Judge Abella was appointed as Sole Commissioner, Royal Commission on Equality in Employment. The report of this Commission was submitted to the federal Government in November of 1984.

IAN C.A. SPRINGATE      *Alternate Chairman*

Mr. Springate had been a Vice-Chairman of the Board since May of 1976 before being appointed as the Board's Alternate Chairman in October of 1984. He has degrees of B.A. with distinction, (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chairman. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator. From February 1984 to January 1985, he served as Chairman of the Crown Employees Grievance Settlement Board.

LITA-ROSE BETCHERMAN      *Vice-Chairman*

Dr. Betcherman was appointed as a part-time Vice-Chairman in January, 1985. She holds degrees of B.A. (1948, University of Toronto); M.A. (1961, Carlton University); and Ph.D. (1960, University of Toronto). For many years she has served the labour relations community as arbitrator, both interest and grievance, and has also acted as referee under the Ontario *Employment Standards Act*. From 1966 to 1972 she was Director of the Women's Bureau, Ontario Ministry of Labour. In 1972 she was appointed chairman of an inter-ministerial committee which prepared the Green Paper on Equal Opportunity Programs for Women in the Public Service. She has been a member of the Ontario Human Rights Commission, Ontario Press Council, Education Relations Commission, and the Judicial Council of Ontario. She is the author of two books which deal respectively with the history of fascism and communism in Canada in the interwar period.

E. NORRIS DAVIS      *Vice-Chairman*

Mr. Davis, who holds the degree of LL.B. (Sask.) 1938, was first appointed to the Board as an

employer representative in 1948. From 1952 to 1953 he served as the Chairman of the Board. In 1953 Mr. Davis left the Board and during the next 15 years held several positions in corporate personnel and industrial relations, including a number of years as President of Carling O'Keefe Breweries of Canada Limited. Mr. Davis returned to the Board as a part-time Vice-Chairman in 1977. Mr. Davis is an experienced arbitrator and referee under the *Employment Standards Act*.

RORY F. EGAN      *Vice-Chairman*

Mr. Egan completed his undergraduate work at St. Michael's College, University of Toronto in 1938. After the intervening world war, Mr. Egan graduated from Osgoode Hall in 1945. Called to the Bar in the same year, he engaged in the practice of law, and served for one year as Assistant Crown Attorney in St. Thomas, Ontario. In 1954 he joined A.V. Roe as Legal Assistant to the Vice-President of Industrial Relations. Mr. Egan returned to private practice with a law firm specializing in labour relations law in 1959. In 1963 he left his law practice to devote his time to chairing boards of conciliation and arbitration. Mr. Egan was appointed a Vice-Chairman to the Ontario Labour Relations Board in 1966 and in 1974 was designated Alternate Chairman. He was appointed Chairman of the Ontario Police Arbitration Commission in 1976. Mr. Egan retired from his full time position at the Board in 1979 but continues to serve as a part-time vice-chairman.

D.E. (DON) FRANKS      *Vice-Chairman*

Mr. Franks is a graduate of McMaster University (B.A. 1960) and Osgoode Hall Law School (LL.B. 1967). Joining the Board in 1969, he served as its Solicitor. In 1972 Mr. Franks was appointed a Vice-Chairman of the Board. He occupied this position until 1975 when he was appointed Vice-Chairman of the Construction Industry Review Panel, which position he held until May, 1980. Mr. Franks also served, during 1975-76, as the Commissioner on the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario. The report prepared by him led to the amendment of *The Labour Relations Act* in 1977 which provided for province-wide bargaining in the construction industry. Mr. Franks was also involved in the implementation and monitoring of the province-wide bargaining scheme. In 1978 he was appointed chairman of a conciliation board by the government of Saskatchewan, which resolved a two-month province-wide strike by the Labourers' Union. Mr. Franks returned to the Labour Relations Board as a Vice-Chairman in May of 1980. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

HARRY FREEDMAN      *Vice-Chairman*

Mr. Freedman was appointed a Vice-Chairman of the Board in September, 1984. Having acquired the degrees of B.A. (University of Toronto, 1971) and LL.B. (Osgoode Hall Law School, 1975), Mr. Freedman was called to the Ontario bar in 1977. He practised labour law with a Toronto law firm until April, 1979, when he became the Ontario Labour Relations Board's Senior Solicitor. He held this position until his appointment as Vice-Chairman. Mr. Freedman has been associated with Ryerson Polytechnical Institute for several years as a lecturer in industrial relations, and taught a seminar course in grievance arbitration at Osgoode Hall Law School. He has authored several papers on labour relations practice in Ontario, and has been involved in organizing the labour law continuing education programme of the Law Society of Upper Canada. Mr. Freedman also sits as grievance arbitrator.



R.A. (RON) FURNESS      *Vice-Chairman*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his LL.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chairman in 1969.

OWEN V. GRAY      *Vice-Chairman*

Mr. Gray joined the Board as a Vice-Chairman in October, 1983. He is a graduate of Queen's University, Kingston, (B.Sc. Hons, 1971) and the University of Toronto, (LL.B. 1974). After his call to the Ontario Bar in 1976, Mr. Gray practised law with a Toronto law firm until his appointment to the Board.

ROBERT D. HOWE      *Vice-Chairman*

Mr. Howe was appointed to the Board as a part-time Vice-Chairman in February, 1980 and became a full-time Vice-Chairman effective June 1, 1981. He graduated with a LL.B. (gold-medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 he was a law professor at the Faculty of Law, University of Windsor. From 1977 until his appointment to the Board, he practised law as an associate of a Windsor law firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator. During May-August, 1984, Mr. Howe served as Chairman of the Board in an acting capacity.

PAULA KNOPF      *Vice-Chairman*

Mrs. Knopf joined the Board as a part-time Vice-Chairman in August, 1984. She graduated with a B.A. from the University of Toronto, 1972, and LL.B. from Osgoode Hall Law School, 1975. Upon her call to the Ontario bar in 1977, she practised law with a Toronto law firm briefly before commencing her own private practice with emphasis in the area of labour relations. A former member of the faculty of Osgoode Hall Law School, Mrs. Knopf is an experienced fact finder, mediator and arbitrator.

RICHARD (RICK) MacDOWELL      *Vice-Chairman*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), a M.Sc. (with Distinction) in Economics from the London School of Economics & Political Science (1970) and a LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chairman in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit. During May-August, 1984, Mr. MacDowell served as the Board's Alternate Chairman in an acting capacity.

**MORT. G. MITCHNICK**      *Vice-Chairman*

Mr. Mitchnick was appointed as Vice-Chairman of the Board in November, 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his LL.B. at the University of Toronto Law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board.

**NORMAN B. SATTERFIELD**      *Vice-Chairman*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chairman. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He has been involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years. Mr. Satterfield is a past Director of the Construction Labour Relations Association of Ontario and a past Member of the National Relations Committee of the Canadian Manufacturers' Association.

**SUSAN A. TACON**      *Vice-Chairman*

Ms. Tacon joined the Labour Relations Board as a Vice-Chairman in July, 1984. She holds a B.A. degree (1970) from York University and LL.B. (1976) and LL.M. (1978) degrees from Osgoode Hall Law School. At the time of her appointment to the Board she was employed as employee relations officer at York University and was also a part-time faculty member at Osgoode Hall Law School. Ms. Tacon has several publications, including a text and several articles in law journals.

**Members Representative of Labour and Management****BROMLEY L. ARMSTRONG**

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in February of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board. Mr. Armstrong was honoured by the Government of Jamaica when he was appointed a Member of the Order of Distinction in the rank of officer, in the 1983 Independence Day Civil Honours List.

**CLIVE A. BALLENTINE**

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its

Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

#### JOHN D. BELL

Mr. Bell has been a full-time Member of the Board representing management since 1970. He was employed for 33 years at Massey-Ferguson Limited in various personnel and industrial relations capacities prior to his appointment to the Board. The last position he held at the Company was Director of Personnel and Industrial Relations, Industrial and Construction Machinery Division. Mr. Bell retired as a full-time Board Member in August, 1982 and was subsequently re-appointed as part-time Board Member.

#### DONALD H. BLAIR

Mr. Blair was appointed as a part-time member of the Board representing management in March, 1983. Mr. Blair retired from Dominion stores after 31 years of service, the last 15 years as Director of Labour Relations. In May of 1983, Mr. Blair established a firm specializing in providing industrial relations consulting services. He has been a member of the Personnel Association of Toronto since 1960 and was a Director of the same during 1965-67. He was also Vice-Chairman of the Board of Directors of the Central Ontario Industrial Relations Institute from 1979 to 1983.

#### FRANK C. BURNET

On December, 1983, Mr. Burnet was appointed a part-time Board Member representing management. After graduating from the University of Saskatchewan (B.A. Economics, 1940) Mr. Burnet was engaged in personnel capacities in several corporations in Ontario and Quebec. In 1970 he joined Inco Ltd., as its Director of Industrial Relations responsible for all Canadian Operations. From 1972 until his retirement in 1982, Mr. Burnet held the position of Vice-President Employee Relations, responsible for employee relations activities in Canada, U.S., U.K., and other foreign operations. The many offices Mr. Burnet has held include: Chairman, National Industrial Relations Committee of the Canadian Manufacturers' Association, 1978-81; Governor and Member of the Executive Committee of the Canadian Centre for Occupational Health and Safety, 1982-83; Member of OECD Joint Labour-Management team studying technological change in the U.S. (1963) and incomes policy in the U.K. and Sweden, (1965).

#### LEONARD C. COLLINS

Mr. Collins was appointed a part-time Member of the Board representing labour in November, 1982. Prior to joining the Board Mr. Collins had been very active in the trade union movement in Ontario. From 1945 to 1960 he held various positions with Local 232 of the United Rubber Workers, including the positions of Vice-President from 1950 to 1954 and President from 1954 to 1960. In 1960 he was appointed International Field Representative for the United Rubber Workers and later served as acting Director of District 6.

#### WILLIAM A. CORRELL

A graduate of McMaster University (B.A. 1949), Mr. Correll was appointed in January, 1985, as a part-time Board Member representing management. He joined the Board with an impressive



background in the personnel field. Having held responsible personnel positions at Stelco, Atomic Energy of Canada Limited and DeHavilland Aircraft of Canada Limited for a number of years, Mr. Correll joined Inco Limited in 1971. After serving as that company's Assistant Vice-President and Director of Industrial Relations, in 1977 Mr. Correll became Vice-President of Inco Metals Company. He has lectured on personnel and management subjects at community college and university level and has conducted seminars for various management groups. He is active as management representative on boards of arbitration and on various management organizations.

#### MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he has held include: Director of Labour Relations of the Ontario Federation of Construction Associations; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel; Director of Industrial Relations, Kaiser Canada; Manager of Industrial Relations of the SNC Group; and Executive Director of the Construction Employers Co-ordinating Council of Ontario. Mr. Eayrs is a past Chairman of the National Labour Relations Committee of the Canadian Construction Association, and is presently a vice-chairman of the Joint Labour-Management Construction Industry Advisory Board. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

#### ROBERT J. GALLIVAN

In January, 1985, Mr. Gallivan was appointed a part-time Board Member representing management. After holding several responsible personnel positions with C.I.L. Inc., Mr. Gallivan became that company's National Employee Relations Manager in 1970 and held this position for 13 years. For many years, he has been an active member of various management organizations, including the Canadian Chamber of Commerce and the Canadian Manufacturers' Association. Mr. Gallivan continues to serve as management representative on various government boards and commissions on a part-time basis.

#### ANDREW GRANT

Mr. Grant was appointed a part-time Board Member representing management in April, 1983. After a period of employment at Gulf Canada, Mr. Grant joined B.P. Canada in 1960. Mr. Grant has held offices in various committees including the National Board of Directors of the Packaging Association of Canada; Chairman, Industry Committee on Metric Conversion and Corporate Representative and Chairman of the Joint Canadian/U.S. Technical Committee of the Packaging Institute, U.S.A.

#### PAT V. GRASSO

Appointed a part-time member of the Board representing labour in December, 1982, Mr. Grasso has been active in the labour movement in Ontario for many years. Having held various offices in District 50 of the United Mine Workers of America, he was appointed Staff Representative in 1958, and Assistant to the Regional Director for Ontario in 1965. In 1969, Mr. Grasso became the Regional Director for Ontario and was elected to the International Executive Board. When District 50 merged with the United Steelworkers of America in 1972, he became Staff Representative of the Steelworkers in charge of organizing in the Toronto area. In January 1982, Mr. Grasso was



transferred to the District 6 office of the Steelworkers and appointed District Representative in charge of co-ordinating, organizing and special projects.

#### ANNE S. GRIBBEN

Ms. Gribben, a registered nurse by profession, obtained a B.A. from the University of Toronto in 1968, in addition to her nursing qualification. Her nursing career at the Toronto Western Hospital included 13 years served in a supervisory capacity. She has served on various committees of both the Canadian Nurses' Association and the Registered Nurses' Association since 1950. An Executive Officer of the former District No. 5, Registered Nurses' Association of Ontario from 1960, during 1964-65 she was involved in its re-organization into the present-day Metro Toronto Chapter. Ms. Gribben joined the Employment Relations Department of the Registered Nurses' Association of Ontario in 1965, and became its Director in 1968. Ms. Gribben relinquished that post in 1974 to become the Chief Executive Officer of the Ontario Nurses' Association. She was appointed a part-time Board Member representing labour in 1975 — the first woman to be appointed as a Board Member of the Ontario Labour Relations Board.

#### JOSEPH KENNEDY

In May, 1983, Mr. Kennedy was appointed a part-time Board Member representing labour. He has been a member of Local 793 of the International Union of Operating Engineers for over 30 years and has held various offices in that Local. At present he holds the position of Business Manager of Local 793.

#### HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario 1958-62; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and Member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

#### LOUIS LENKINSKI

On August of 1984, Mr. Lenkinski was appointed a part-time Board Member representing labour. A member of the Upholsterers' International Union for many years, he served as business representative of that union from 1958 to 1969. Since 1969, he has held the positions of Project Director and Executive Secretary to the Labour Council of Metropolitan Toronto. In 1975 he became Executive Assistant to the Ontario Federation of Labour. Mr. Lenkinski has frequently served as labour representative on arbitration and conciliation boards and has also represented parties in proceedings before the Labour Relations Board.

#### ROBERT D. McMURDO

Since April of 1984, Mr. McMurdo has served as a part-time Board Member representing management. An honours graduate in business administration (1953) from University of Western

Ontario, Mr. McMurdo has held many industry related offices including: President of the London & District Construction Association, President of the Construction Safety Association of Ontario and President of the Ontario General Contractors Association. He is the President of McKay-Cocker Construction Limited and McKay-Cocker Structures Limited of London and is currently a member of the Ministry of Labour Construction Industry Advisory Board.

#### F. WILLIAM MURRAY

Mr. Murray was a part-time Member of the Board representing management from 1965 to February of 1980, when he assumed a full-time position on the Board. From 1948 to 1963, Mr. Murray was employed as the Manager of the Motor Transport Industrial Relations Bureau, which served as the labour relations representative for groups of companies in Ontario and Quebec. In 1963 he formed his own industrial relations consulting firm and was active in industrial relations consulting work for many trucking firms and related industries. Since 1971 Mr. Murray has been a Member of the Public Service Staff Relations Board. He is also a Member of the Board of Trade Industrial Relations Committee and the Personnel Association of Toronto.

#### JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics as well as a M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies in several parts of the country. He was a vice-president of Labatt Brewing Company for several years before his retirement in January 1982.

#### SEAN O'FLYNN

Upon emigrating to Canada in 1967, Mr. O'Flynn became the co-ordinator of Niagara College in Welland and helped to formulate a credit programme in labour studies, one of Ontario's first such programmes. Since 1974 Mr. O'Flynn held several key positions with the Ontario Public Service Employees Union. He was president of that union until November 1984, when he chose not to seek re-election. Mr. O'Flynn has been very active on behalf of the trade union movement in Ontario and since 1984 has been a Vice-President of the Ontario Federation of Labour. His academic qualifications include: Dip. Econ. Pol. Science (Oxford University, England), B.Sc. (Econ.) (University of Wales) and M.Ed. (New York University, Buffalo, N.Y.). He was appointed a full-time Board Member representing labour in January, 1985.

#### PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britain and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of C.U.P.E. and presently holds the office of Ontario Regional Director of C.U.P.E., and is also a Vice-President of the Ontario Federation of Labour.

## ROSS W. PIRRIE

Mr. Pirrie was appointed a part-time Board Member representing management in January, 1985. Having been employed by Canadian National Railways for ten years, in 1960 he joined Shell Canada Limited. At Shell Canada, Mr. Pirrie held a wide range of managerial positions in general management, occupational health, human resources and industrial relations before retiring in 1984. Mr. Pirrie holds the degree of B.A. (Psychology) from the University of Toronto.

## KENNETH V. ROGERS

Mr. Rogers was appointed in August, 1984, as a part-time Board Member representing labour. From 1967-1976, he was a representative with the International Chemical Workers Union and served as Secretary-Treasurer of the Canadian Chemical Workers Union during 1976-1980. Since the Energy and Chemical Workers Union was founded in 1980, Mr. Rogers has been its Ontario Co-Ordinator. He is a former Vice-President of the Ontario Federation of Labour.

## JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and a LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

## MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

## WILLIAM F. RUTHERFORD

Mr. Rutherford has been a full-time Member of the Board representing labour for seven years. He was the Houdaille Plant Chairman for the UAW for 37 years. He was a Member of the Oshawa District Labour Council between 1944 and 1977 and a Member of the Canadian UAW Council during 1948 and 1971. Mr. Rutherford has served on the Board of Referees of the Unemployment Insurance Commission for 12 years.

## INGE M. STAMP

Appointed a full-time Board Member representing management in August, 1982, Ms. Stamp comes to the Board with many years of experience in the personnel and labour relations field at Bechtel Canada Limited. Having joined that firm as Senior Secretary to the Vice-President of Labour Relations in 1969, Ms. Stamp became Administrative Assistant in 1974 and Labour Relations Assistant in 1975. In 1977 she was appointed labour relations representative, a post she



held prior to her appointment to the Board. In this capacity, Ms. Stamp was appointed, by the Industrial Contractors Association of Canada, as a member of several employer bargaining agencies designated to negotiate collective agreements on behalf of management. Ms. Stamp has been very active in the functions of the Industrial Contractors Association of Canada and since 1979 has served as treasurer responsible for the General Funds and the Ontario Industry Funds.

#### ROBERT J. SWENOR

Mr. Swenor was appointed as a part-time Board Member in February, 1982, to represent management. Mr. Swenor, who holds the degrees of B.A. and M.B.A. from McMaster University and a certificate in Metallurgy of Iron and Steel, has been employed with Dominion Foundries and Steel Ltd., Hamilton, since 1970 and is presently its Assistant Secretary. He is Vice-Chairman of the Canadian Manufacturers' Association Legal Advisory Committee on Environmental Law and also serves on the Legislation Committee, the Sub-Committee on Corporation Law and the Environment Quality Committee of that organization.

#### E.G. (TED) THEOBALD

Mr. Theobald was appointed as a part-time Board Member representing labour in December, 1982. From 1976 to June, 1982, he was an elected member of the Board of Directors of O.P.S.E.U., and during this period served a term as Vice-President. Active in the trade union movement since 1971, Mr. Theobald has served as President and Chief Steward of a 600 member local union. He has served on numerous union committees and has either drafted or directly contributed to several labour relations related reports. He is experienced in the grievance procedure and arbitration.

#### W.H. (BILL) WIGHTMAN

Mr. Wightman was first appointed to the Board 1968, becoming a full-time member in 1977, and resigning from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canadian Manpower and Immigration Council, the Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He was a founding member of the McMaster Medical Centre Advisory Council on Occupational Health and Safety. His writing credits include papers presented at the World Employment Conference in Geneva and symposia at Vienna and Panama City. He is a graduate of Clarkson College (BBA '50) and Columbia University (MS '54) where he lectured while engaged in doctoral studies.

#### JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. Prior to joining the Board he served as the Labour Relations Consultant to the Electrical Contractors Association of Ontario for 10 years. Mr. Wilson has served as the



President of the Electrical Contractors Association of Ontario, Charter Member of the Canadian Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

#### NORMAN A. WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of the Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

#### ROGER WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in August, 1984. Mr. Wilson has had a long association with the United Steelworkers of America, becoming the first Vice-President of Local 14863 in 1974 and its President in 1978. Since 1982, he has held the position of Chief Steward of Local 8562 of the Steelworkers. He is a former counsellor and Deputy Reeve of the Township of Hope.

## V HIGHLIGHTS OF BOARD DECISIONS

### **Arbitrary, discriminatory or bad faith refusal of access to hiring hall records breach of s. 69**

In this complaint four members of the respondent union alleged it had contravened s. 69 of the Act by, inter alia, refusing them access to hiring hall records, which they had sought to determine whether, as they thought, job referrals by the union's hiring hall were being made unfairly. On a motion to dismiss for failure to disclose a prima facie case, counsel for the respondent argued that s. 69 addresses only acts or omissions of a trade union in the actual selecting, referring, assigning, designating or scheduling of persons to employment and that a denial of access to hiring hall records could not breach s. 69 even if the denial was arbitrary, discriminatory or in bad faith. The Board reviewed the language of s. 69, as well as the context in which it was enacted. It held that the words "engaged in the selection, referral ... [etc.] ... of persons to employment" describe the unions to which the section applies; they do not modify or limit the word "act" in the phrase "shall not act in a manner that is arbitrary, discriminatory or in bad faith." From the context of the section's enactment, the Board concluded that the actions with which the later phrase is concerned are actions to which the duty of fair representation in s. 68 is directed, i.e. actions in matters affecting employment of persons represented by the union.

On the basis of the foregoing, the Board concluded that a refusal of information will be a violation of s. 69 if the refusal is arbitrary, discriminatory or in bad faith. The Board stated that, *prima facie*, persons seeking referral have an interest in knowing about job referrals made and the basis on which they are made. Whether a refusal of such information constitutes a breach of s. 69 will require a balancing of the individual's interest with the individual and collective interests of others for whom the union seeks employment. It is for the complainant to establish on the facts of any particular case, that the union has acted in an arbitrary, discriminatory or bad faith manner in striking this balance.

The Board held it would hear the complaint on its merits upon the complainants filing further particulars of other allegations in its complaint. *Maurice Berlinguette et al., re Labourers' Union, Local 1036*, [1984] OLRB Rep. April 586.

### **Parties incorporating by reference terms of other collective agreement not entitled to grieve under that agreement**

This was a referral of a grievance to the Board pursuant to section 124 of the *Labour Relations Act*. The referral raised the issue of whether the applicant, Local 1059 of the Labourers' International Union had jurisdiction to bring the grievance against the respondent employer. The preliminary issue was whether Local 1059 was bound to a collective agreement with the respondent which would give the Board jurisdiction to hear the grievance.

There was no signed agreement between the applicant and the respondent. The uncontested evidence of the respondent indicated that the only collective agreement it had signed with any local of the Labourers' Union was with Local 1089 in Sarnia. Local 1059 contended that this

agreement bound the respondent to the provincial civil engineering collective agreement composed of several collective agreements between named employers and the Ontario Provincial District Council of the Labourers' Union on behalf of its affiliated locals, which included Locals 1059 and 1089.

The Board analysed the applicant's claim that two clauses of the collective agreement between Local 1089 and the respondent bound the latter to the civil engineering agreement. In particular, clause 5.3 of the agreement provided for the employer abiding by wage rates and conditions of agreements that exist in other areas of the Province between a contractor or contractors' association and Local 1089. The civil engineering agreement provided in article 2.03 that each local union is the administrative party for the agreement for work performed within the specified geographic area of such Local, including the filing of grievances under section 124 of the Act. Local 1059 was the administrative party in the geographic area, which was the area where the respondent was performing the work at issue. Therefore, Local 1059 had jurisdiction to bring the grievance, union counsel argued.

The Board indicated that given article 5.3 of the agreement between Local 1089 and the respondent, for Local 1059 to succeed in the present case, there must exist an agreement between a contractor or contractors' association and Local 1089 in the relevant geographical area. The Board was satisfied that the civil engineering agreement, while binding on Local 1089 with respect to each employer who has signed it, was not binding on Local 1089 in the relevant geographical area. As such, Local 1059 had no access to section 124 of the Act with respect to the respondent.

The Board noted that the result would have been no different even if the Board interpreted the agreement between Local 1089 and the respondent as creating an obligation for the respondent to apply the terms of the civil engineering agreement in the relevant geographical area. The respondent had agreed to abide by wage rates and conditions of whatever agreements apply. This only suggests incorporation by reference of the terms in other collective agreements. Had the parties desired the respondent to be bound by some other agreement between Local 1089 and a contractor or contractors' association, the parties would have expressed that intent more clearly. Therefore, the Board was of the view that Local 1089, as the union party to the collective agreement, would be the party to enforce its provisions. This is particularly so given the wording of section 124 of the Act which refers to grievances being brought by a party to a collective agreement. *Sandercock Construction (1976) Ltd.*, [1984] OLRB Rep. April 653.

### **Employer directed to produce payroll records**

In this ongoing bargaining complaint, an officer of the respondent employer was served with a summons requiring him to produce payroll and benefit records of the company for the period commencing just prior to the ongoing strike and continuing to date. The employer objected to the summons, arguing that the union was engaging in a "fishing expedition" and an abuse of process, and that the information in the documents was irrelevant and, in any event, "confidential".

The Board found that the documents were relevant to the particular issues which had been raised in the complaint. On the issue of "confidentiality", the Board concluded that the employer was using the term loosely to indicate that the documents were personal and not public. It was not claiming any statutory or common law privilege. While putting some limitation on the scope of the records, the Board ruled that the documents sought were "produceable" pursuant to the



subpoena. Counsel for the complainant then sought an order requiring, in effect, that the documents in question be forthwith produced to him for his inspection prior to any attempt to introduce them into evidence.

The Board held that it had the power to make such an order in appropriate circumstances, and would do so in this case. The Board noted, however, that a party who seeks and obtains such an order impliedly undertakes to the Board, and to the person from whom production is compelled, that the documents and information in them will not be used for purposes collateral or ulterior to the proceedings in which the order is made. Breach of such an undertaking, the Board noted, could be the subject of contempt proceedings.

The Board held that it can require production during an adjournment of the Board's hearings. In the circumstances of the case, the Board's order set out formal requirements for deposit of the documents in question with the Registrar, and for inspection of the documents at the Board's premises; these requirements would apply if the parties were unable to agree on more informal arrangements. *Shaw-Almex Industries Limited* [1984] OLRB Rep. April 659.

### **Board holds union owed duty of fair representation to part-time employee**

A part-time employee alleged a contravention, *inter alia*, of the duty of fair representation by the union, during the negotiations for a collective agreement and by refusing to file a grievance on his behalf when he was terminated by the employer from his part-time position. The union and the employer took the position that the union had no representation rights with respect to part-time employees and that therefore no duty of fair representation was owed to the complainant. While the respondents relied on provisions of the collective agreement to support their position, they went on to submit that any ambiguity in the collective agreement should be resolved in their favour because they were in agreement that part-timers were never intended to be represented by the union.

The Board stated that where both employer and union agree that there was no intention to recognize the union for a group of employees, the Board would require compelling evidence to reach a contrary conclusion. On the other hand, a s. 68 complaint cannot fail simply because the union and the employer, (both of whom may be affected by a finding of violation) deny any intention to extend representation to such group. The intention must be gathered from the recognition clause in the applicable collective agreement. Where the clause is ambiguous, the parties' intentions must be inferred from the entire agreement and if still left in doubt, by examining the conduct of the parties.

Examining the collective agreement between the respondents, the Board found nothing in the recognition clause excluding part-timers. Nor could the Board find any provision in the balance of the agreement which had the effect of amending the scope of the recognition clause. While most of the provisions relating to part-timers were designed to protect the full-time employees represented by the union, the requirement that part-timers receive the same minimum wage rate as regular employees and the provision for the check-off of union dues from part-timers, were seen by the Board as negotiating for part-timers by the union and being renumerated for so doing. In agreeing to these provisions the employer gave recognition to the union for part-timers. The Board noted that the Canada Labour Relations Board had, prior to the negotiation of the instant collective agreement, held that a duty of fair representation was owed by the respondent union to a part-time employee, where the collective agreement in question was identical in all essential respects. The instant collective agreement was entered into subsequently, leaving the key contentious provisions



unchanged, even though the parties had full knowledge of the interpretation placed upon it by the Canada Labour Relations Board. Therefore, even if the Board were to conclude that the collective agreement left the matter in doubt, from an examination of the conduct of the parties, the Board must conclude that the parties accepted that the union was entitled to represent part-timers as a part of the bargaining unit. That being so, the duty of fair representation also attached.

Turning to the merits, the Board found that the union had failed in its duty under s. 68 by failing to consult the complainant during negotiations. *Consolidated Fastfrate Limited, re Endel Vesik and Teamsters, Local 938*, [1984] OLRB Rep. May 691.

### **“Carve out” unnecessary to remedy unfair representation of technical employees**

A group of technical and professional employees of the City of Thunder Bay had filed a complainant alleging unfair representation by CUPE, Local 87. They formed an association and in an application for certification, sought a “carve out” from the CUPE unit. In a previous decisions the Board dealt with the unfair labour practice complaint only, and found that Local 87 had contravened s. 68. (See *Monthly Highlights*, June 1983) On the question of appropriate remedy, the Board pointed out that the separation of technical and professional employees goes against Board policy as to bargaining unit configuration and expressed its concerns as to the viability of the unit, the jeopardy to job mobility and the adverse effects on industrial stability. Therefore, the Board concluded that the dismantling of the bargaining unit should be a last resort to be adopted only if the Board was satisfied that the failure of representation could not be remedied by some less drastic form of redress.

On the evidence, the Board concluded that such a drastic step was unnecessary, and that the interest of the complainants could be adequately redressed by a remedial order under s. 89. The Board noted that the unlawful conduct, i.e. misrepresentation and removal from the committee had not resulted in any actual loss to the complainants, and that the individuals responsible for the violation were no longer in office. Over the objection of the complainants, the Board admitted evidence that subsequent to the finding of the breach, the union had taken some steps at negotiations to remedy the situation. The request for the return of union dues paid and for costs were also denied.

The Board noted that mistrust and absence of accountability in the negotiation and ratification process were at the root of the problem and that the remedy must be fashioned to correct that situation. Accordingly the Board directed the establishment, on a permanent basis, of a system of proportional representation in the bargaining structure. The bargaining committee was to comprise of five members separately elected from the different levels in the wage grid. This will provide input from the full range of the unit employees in the formulation of bargaining objectives. A posting was also directed. *Thunder Bay, Corporation of the City of*, [1984] OLRB Rep. May 759.

### **Retail food store opened in premises of closed Dominion Store – not sale of business**

Dominion Stores operated a retail store in leased premises in a small suburban shopping plaza. The lease had a long term, and its terms were becoming increasingly uneconomic to the landlord. The landlord sought Dominion’s surrender of this lease, and when Dominion agreed, the landlord leased the premises to the respondent, which already operated two other retail food stores catering to the “Italian market”. The surrender was not contingent on the respondent entering into

a lease. The respondent's agreement to lease was not contingent on its obtaining anything from Dominion, and there was no contract between the respondent and Dominion until the latter offered some store equipment for sale, which was well after the respective commitments to surrender and lease had been made. The respondent only became aware that Dominion was selling equipment after the sale had begun and some equipment sold. The respondent bought the remaining unsold equipment for \$56,000, about 15% of its total cost of opening its new store in Dominion's old location. The applicant union sought a declaration that there had been a sale of part of Dominion's business.

The Board concluded that the landlord was not an intermediary in a sale of Dominion's business to the respondent. While the coincidence of location and similarity of operation favoured a finding of sale when seen in isolation, the independence of the three transactions, i.e.: Dominion's surrender of the lease, the respondent's acquisition of a new lease, and the equipment purchase, point to the contrary. The hiatus of 4½ months during which the premises remained vacant, the existence and similarity of the respondent's pre-existing operation and the fact that the management and key personnel for the new store all came from respondent's existing operations, all weighed against a finding of a sale. On balance the Board concluded that what had occurred was an expansion of a parallel business in which some assets of Dominion came to be used. The request for a declaration of sale was denied. *Valencia Foods*, [1984] OLRB Rep. May 733.

#### **Timely referral for expedited arbitration available regardless of prior initiation of contractual arbitration by other party**

This was a reference under s. 107(1) of the Act by the Minister to the Board, of a question relating to his authority under s. 45 to appoint an arbitrator. The facts were as follows: The union had filed a grievance on behalf of a discharged employee and the grievance procedure was exhausted. Under the terms of the collective agreement, each of the parties had seven days to refer the matter to arbitration. The union acted first by appointing its nominee to a tripartite Arbitration Board contemplated by the collective agreement. Subsequent to receiving notice of the appointment of the union's nominee, but *before* the expiry of the seven day period prescribed in the collective agreement for referral of grievances to arbitration, the employer requested the minister to appoint an arbitrator under s. 45. The union, relying upon the Divisional Court decision in *Royal York Hotel*, argued that when it embarked upon the arbitration route prescribed in the agreement by appointing its nominee, it automatically foreclosed the availability of a single arbitrator under s. 45.

The Board reviewed the court decision in *Royal York Hotel*, and concluded that the only issue before the court was the timeliness of the s. 45 referral. The issue of whether the prior initiation of the contractual arbitration process could foreclose a timely resort to the statutory alternative was not in issue before the court. Reviewing the underlying structure and purpose of s. 45, the Board was of the view that the legislature did not envisage a "foot race" wherein the party who makes the first reference to arbitration can control the form of the arbitration mechanism — particularly if it involves a pre-emption of the statutorily designated alternative. The opening words of s. 45, "Notwithstanding the arbitration provision in the collective agreement", together with the exclusive jurisdiction accorded to the s. 45 arbitrator suggested the opposite conclusion. The Board concluded that the plain words of the statute suggest that a timely s. 45 referral is available regardless of the arbitration procedure in the collective agreement.

Consequently, the Board was of the opinion that the employer's referral was timely under

s. 45(2) and that the minister had jurisdiction to appoint an arbitrator under s. 45. *City of Mississauga (Transit Department)*, [1984] OLRB Rep. June 844.

### **Extent of employee obligation to produce company documents under summons**

The union filed an application under section 93 of the *Labour Relations Act* alleging that the respondent employer had engaged in an unlawful lockout through the contracting out of bargaining unit work and the laying-off of bargaining unit employees.

One of the co-owners of the respondent nursing home testified that the impugned conduct was motivated by the employer's deteriorating financial situation. The initial hearing concluded without the co-owner's cross-examination having been completed. Following that hearing, the applicant requested, and the Board issued, a subpoena directing the employer to produce certain financial and business documents relating to the matters the respondent had asserted at the hearing. The respondent refused to produce the documents requested, in particular the audited financial reports of the company.

The union argued that since the respondent has put its financial position in issue as the purported reason for its conduct, the union was entitled to test such assertion in cross-examination and to require the production of such financial records as might confirm or contradict the witnesses' oral evidence. The respondent contended that its records were confidential and that a private company should not have to make public its annual financial statements.

Observing that the documents in question were not privileged in a legal sense, the Board outlined the public policy considerations that underlie the practice of disclosure. The Board accepted the view that complete disclosure is an aid to discovering the truth so that justice can be done as between the parties. The Board did caution, however, that any disclosure involves a concomitant implied undertaking on the part of the party to whom documents are produced, not to use the documents for a collateral or ulterior purpose. The Board also noted that the respondent's concern for confidentiality could also be addressed through section 9(1)(b) of the *Statutory Powers Procedure Act* dealing with *in camera* hearings. In the result, the Board ordered production of the documents. *Gordon-Nelson Development Company Limited*, [1984] OLRB Rep. June 807.

### **Referral to expedited arbitration made after expiry of period stipulated in collective agreement untimely**

This was a reference to the Board by the Minister, of a question relating to his authority to appoint an arbitrator under s. 45 of the Act. The employer had made the referral to the Minister two days after the time period stipulated in the collective agreement for referring grievances to arbitration had expired.

Reviewing the purpose behind the expedited arbitration provision of the Act and in light of the Court decision in *Royal York Hotel*, the Board concluded that the time restrictions in s. 45 must be strictly construed. In view of the facts before it, the Board held that the referral under s. 45 in question was untimely and that the Minister had no authority to appoint an arbitrator under that section. *St. Raphael's Nursing Home (Kitchener)*, [1984] OLRB Rep. June 859.

### **No objective justification for exemption of senior employees from load capacity restrictions – s. 68 breached**



The complainant, a truck driver engaged as a dependent contractor, alleged that the union had contravened s. 69 of the Act by renegotiating the no lay-off clause of the collective agreement in a manner that protected a core group of sixteen drivers from lay-off, but required other drivers with less seniority to be laid-off when the average number of loads per day consistently fell below five. The actions complained of were the latest development in a long process of declining workloads and attrition of the bargaining unit. The previous collective agreement contained a "no lay-off" clause. At the time it was entered into, the bargaining unit consisted of only the sixteen drivers in that core group. The clause made no allowance for lay-off of drivers subsequently recalled. The complainant was recalled during a brief upturn in business but, as a result of the no lay-off clause, could not be laid-off when business declined. However, he was immediately laid-off when the new collective agreement containing the aforementioned revision came into effect. It was also alleged that the union had breached its duty of fair representation by negotiating a clause to provide for eventual standardization of truck size among drivers, the transitional provisions of which allowed only members of the core group to load their oversize trucks to capacity.

The Board reviewed its decision in *Dufferin Aggregates*, [1982] OLRB Rep. Jan. 35, and reaffirmed the principle that where a union's decision to renegotiate job security provisions of a collective agreement has the effect of transferring employment advantages from a minority to the majority of the bargaining unit, the union must show some objective justification for the action beyond the mere will of the majority. The Board concluded that the amendment of the no lay-off clause was part of a reasonable response to the problem faced by the union in attempting to secure sufficient work for its members to enable them to meet their own costs and survive an economic downturn. The union had shown objective justification for its decision to negotiate that modified no lay-off provision, and as the decision had also been arrived at in a procedurally fair manner, the amendment of the "no lay-off" clause was neither arbitrary, discriminatory, nor undertaken in bad faith.

The Board concluded that the clause providing for standardization of truck size was also objectively justified. The amendment was meant to reduce friction between owners of large and small trucks within the unit by removing the source of the friction, i.e. the differing economic impact of recession on large and small operators. The negotiation of that provision did not therefore breach the union's duty under s. 68. The Board decided, however, that the provision exempting only core group drivers from load limitations on existing oversize trucks discriminated against other drivers such as the complainant, without any objective justification. The union had therefore contravened s. 68 by negotiating it into the agreement. *Felix Charles et al.* [1984] OLRB Rep. July 908.

### **Contracting out of core activity held to be unlawful**

This complaint arose out of the decision of Kennedy Lodge to contract out its nursing care functions to Medox Health Care Services. The proposed contracting out would have resulted in the termination of 92 employees represented by the complainant union, and covered by a collective agreement. The union argued that the decision to contract out was motivated by the employer's desire to avoid the union and its obligations under the collective agreement, and as such, contravened ss. 64 and 66 of the Act. The Board was asked by the union to determine whether the Medox employees would really be Kennedy Lodge employees under s. 106(2). If they were, the union submitted that the lay-off of more senior employees constituted a massive repudiation of the collective agreement contrary to s. 50. In the alternative, the union submitted that Medox was bound by the provisions of the existing agreement as a related employer under



s. 1(4). The employer cited its right, pursuant to the collective agreement, to contract out work “where the employer finds it necessary” and denied any anti-union motivation. The employer further argued that Medox was an independent entity which employed the persons it supplied.

The Board had to first determine whether Medox or Kennedy Lodge was the employer of the employees hired by Medox. While the collective agreement permitted contracting out, the agreement would not permit an arrangement where Kennedy Lodge remained the employer. The effect of that arrangement would simply be the replacement of union employees with non-union employees. The Board then reviewed the relevant criteria for determining the identity of the real employer. Kennedy Lodge had purported to contract out its “core” activity of providing nursing care. The circumstances of the subcontract and the regulations under the *Nursing Home Act* governing Kennedy Lodge were such that Kennedy Lodge retained control over the persons supplied by the contractor and was therefore their real employer. Thus, the attempt to employ new employees while more senior employees were laid-off constituted a breach of ss. 50 and 64. In the alternative, the Board found that Kennedy Lodge and Medox were related employers within the meaning of section 1(4), and therefore, even if Medox were the real employer, it would be subject to the collective agreement between Kennedy Lodge and the Union.

The Board went on to observe that although sub-contracting in accordance with a collective agreement to avoid the provisions of a collective agreement may not *per se* be unlawful, a subcontracting of “core” — as opposed to “peripheral” — activities that occurs on the employer’s premises, with employer’s equipment, and under the employer’s control, is a breach of the Act, notwithstanding permissive provisions in the collective agreement operating ostensibly to the contrary. The work of the employees that was subcontracted in this case formed part of the employer’s core activity, namely, hands on nursing care. Finally, the Board noted that a sub-contracting may lead to certain rebuttable inferences. The circumstances of this case led to a rebuttable inference of anti-union motivation being drawn by the Board. The Board concluded that, while Kennedy Lodge may be in financial difficulty, it was open for Kennedy Lodge to seek contract concessions from the union, which has an interest in its members’ continued employment. This the employer had not done. *Kennedy Lodge Inc. et al.* [1984] OLRB Rep. July 931.

### **Union in vote position withdrawing and refiling to avoid vote — Board directing vote despite membership over 55%**

The applicant union applied for full-time and part-time bargaining units. While it had sufficient membership support in the full-time unit for certification without a vote, it was in a vote position with respect to the part-time unit. On May 31, 1984 the union sought consent to withdraw the application with respect to the part-time unit after a vote had been directed by the Board. In view of the timing of the request, the Board dismissed the application by decision dated June 1, 1984. Subsequently the union filed a new application with respect to the same part-time unit, using all of the membership evidence filed in the first application, and an additional card, which was sufficient to push its membership support over the 55% level required for automatic certification. The employer, relying on *Mathias Ouellette*, argued that the Board should refuse to entertain the application and impose a six month bar.

The Board held that this was not a case where the first application was withdrawn in anticipation of defeat in the vote and refused to impose a bar. However, it held that, the union by withdrawing and filing a new application, should not be able to avoid a vote already directed by

the Board. A vote was directed again despite the level of membership support. *Children's Aid Society of Owen Sound*, [1984] OLRB Rep. July 995.

### **Test for determining employee status of employees engaged in more than one craft**

The union applied for certification as bargaining agent for a bargaining unit of truck drivers in the employ of the respondent pursuant to the construction industry provisions of the *Labour Relations Act*. The Board outlined the description of the bargaining unit appropriate for collective bargaining which essentially placed all truck drivers in the respondent's employ in a single unit. The applicant challenged the inclusion of two employees of the respondent on the list of bargaining unit employees. The applicant argued that the two individuals were either primarily employed as labourers and not as truck drivers, or alternatively, if employed as truck drivers, they drove trucks of a different type so as to preclude the establishment of a community of interest between them and the other drivers in the unit.

The Board indicated that construction industry bargaining units are generally described in terms of the particular craft of the employee. As such, the Board requires that all employees pertaining to that craft be included in the bargaining unit, to avoid the fragmentation and proliferation of construction industry bargaining units. Therefore, the two individuals sought to be excluded by the applicant, were correctly included in the list of employees, assuming they were in fact employed as truck drivers.

In determining whether the employees in question were primarily employed as labourers or truck drivers, the Board identified different tests to be employed in different situations. Where employees in the construction industry are engaged in a number of different crafts but are paid a single rate, the Board reaffirmed its practice of accepting the craft in which they are employed for a majority of the time as the one governing their status on an application for certification. Where, however, the employee's time is equally divided between two crafts, the skill for which such employee was primarily hired should govern the characterization, provided he is paid the appropriate rate for such trade. Where such rate is not paid, and the general criteria are not applicable, the Board suggested that the determination of the employee's status will depend on how such employee was regarded by the respondent employer at the time the application for certification was filed. *Dufresne Piling Co. (1967)*, [1984] OLRB Rep. July 924.

### **Employee outside geographic scope of unit having no status to bring termination application**

In this application, an employee of the intervener contracting company employed at Hamilton applied for a declaration that the respondent trade union no longer represented employees in the bargaining unit for which it was the bargaining agent. The respondent union opposed the application on the basis that it held bargaining rights for employees in Board area #8 only and that the application had therefore not been brought by an "employee in the bargaining unit" as required by section 57 of the Act.

The Board reviewed the bargaining history between the union and the company. The union had been party to a collective agreement with a voluntary association of contractors of which the employer was not a member. In settlement of a successor rights application under the Act, the employer agreed to be bound to the association agreement, the scope clause of which accorded the union bargaining rights for a province-wide bargaining unit. Upon expiry of the agreement, the

association concluded a new agreement with the union incorporating an identical scope clause. Shortly thereafter the Board granted the association an order of accreditation as bargaining agent for all employers employing individuals represented by the union, within Board area #8. At no time was the employer a member of the association.

The Board dismissed the termination application. The Board concluded that as the first collective agreement had not been renewed, and as the employer was at no time a member of the association, the association had no authority to bind the employer to a province-wide bargaining unit. The effect of the Board's accreditation order was to bind the employer to the association agreement only to the scope of the accreditation order itself, namely Board area #8. Accordingly, the union held bargaining rights only for employees of the employer engaged in Board area #8.

The Board observed that section 57(2) of the Act contemplates a termination application being brought by an employee in "the bargaining unit defined in a collective agreement". In this case the collective agreement described a province-wide unit that would include the applicant. It held, however, that the phrase "the bargaining unit defined in a collective agreement" is not to be read literally where to do so would lead to the Board's considering the wishes of persons other than employees for whom the union holds bargaining rights. Rather, the "bargaining unit" for purposes of a termination application includes only those employees the union is entitled to represent. As the applicant was not an employee engaged within Board area #8, the application should be dismissed. *Rennie Sheet Metal Ltd.*, [1984] OLRB Rep. July 1004.

### **E.B.A. entitled to notice of termination application in ICI sector**

At issue was whether on an application to terminate bargaining rights of a union in the industrial, commercial and institutional sector of the construction industry, an employee bargaining agency was entitled to notice of the application.

The local that was the object of termination application was a constituent local of the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (the "Conference") being a council of trade unions comprised of the Ontario locals of the International Union of Bricklayers and Allied Craftsmen (the "International"). The Conference and the International constituted the employee bargaining agent designated pursuant to clause (a) of section 139(1) of the *Labour Relations Act*, and as such, constituted the union party to the provincial agreement applying to the relevant employees in the ICI sector of the construction industry in the Province. The International, the Conference and their affiliated locals were affiliated bargaining agents within the meaning of section 137(1)(a) of the Act.

Counsel for the Conference submitted that because the Conference represented the designated employee bargaining agency and as such was a party to the provincial agreement which set out the rights of the local, it was a party with a direct legal interest in the proceedings and therefore should have received notice of the application and the hearing. Counsel for the employer submitted that since proper notice was served on the local, and since it was a constituent local of the Conference, such notice should be considered proper notice to the Conference.

On reviewing the facts, the Board determined that the provincial agreement between the International, the Conference and the Masonry Industry Employers Council is an agreement without reference to sectors of the construction industry and as such applied to all sectors of the industry. A previous Board decision declared the employer to be bound to the provincial



agreement in respect of all sectors of the construction industry. The bargaining rights contained in the provincial agreement with respect to the ICI sector extended to all affiliated bargaining agents of the employee bargaining agency. Consequently, if a declaration terminating bargaining rights in respect to the ICI sector were to issue, it would extinguish bargaining rights in the sector for all affiliated bargaining agents. As a result, the affiliated bargaining agents were held to be entitled to notice. Since the International and the Conference, as the designated employee bargaining agency, is the agent for affiliated bargaining agents, for purposes of concluding a provincial agreement, the Board concluded that it is entitled to notice of the application and the hearings into the application. *Stuart Riel Masonry Contractor*, [1984] OLRB Rep. July 1011.

### **Causing others to engage in an unlawful strike**

The applicant, a general contractor in the construction industry sought a declaration and direction against the respondent Electrical Workers' Union pursuant to s. 135 of the Act as amended by S.O. 1984, c. 34, s. 3 (proclaimed in force June 27, 1984).

The applicant subcontracted the electrical work on one of its job sites to a non-union company. Other tradesmen on the site were unionized. The site was picketed by the International Brotherhood of Electrical Workers. No tradesman of the unionized subcontractors of the applicant crossed the picket line. The respondent stressed that it did not tell anyone to not go to work and that the purpose of the picket line was "informational" only. The Board noted that it has long been recognized that affiliated building trades of the construction industry can be expected to, and do, respect each others picket-lines without having to be expressly "told" to do so. S. 135 as amended prohibits any act that, "as a probable and reasonable consequence", will cause others to engage in an unlawful strike. Given the reality of the construction industry, as reflected both in Court decisions and in Board cease-and-desist directions made prior to the amendment, as well as the impact of the picket-line in the case at hand, the Board held the respondents cannot credibly argue that they did not know or ought not to have known that their picket-line would have caused others to engage in an unlawful strike. The Board accordingly ordered them to cease and desist in their picketing. *Acme Building & Construction Limited and IBEW, Local 1687 and Lou Popovitch*, [1984] OLRB Rep. Aug. 1037.

### **Refusal to extend leave of absence arbitrary and contrary to s. 69**

The complainant was a member of the respondent trade union for 17 years. He alleged that his union violated s. 68 and s. 69 of the Act in refusing his request for an extension of a leave of absence and posting his job for seniority bid without giving him adequate opportunity to explain the reasons for his late return.

The union's responsibilities under the collective agreement included referring members to employment and granting leaves of absence. In 1983 the complainant, an avid sailor, was granted a 5 month leave of absence to permit him to sail his boat across the Atlantic. While he was on that leave of absence, the union's Executive Board decided to recommend to the membership that the complainant's job be posted for seniority bid if he did not return on time. The union subsequently received a letter from the complainant advising that he was unable to return by the date originally contemplated due to adverse climatic conditions, and requesting an extension of his leave of absence. The letter was read at a general membership meeting held prior to the expiration of the leave of absence. At that meeting the membership accepted the Executive Board's recommendation that the job be posted if the complainant failed to return on time. The union made



no attempt to notify the complainant of that decision. When he later became aware of it, the complainant immediately sent a telegram requesting an opportunity to defend his position. The matter was raised at the next general membership meeting, which was held after the complainant's leave had expired but before he had actually returned. Although a majority of the members voted to keep the complainant's job open, they did not constitute the two-third's majority required to rescind the previous motion. Accordingly, the complainant's position was put on the floor for seniority bid and filled by another member of the union.

The respondent submitted that s. 68 was inapplicable because it only covers union representation vis-a-vis an employer. The respondent also submitted that the refusal to extend the complainant's leave was merely incidental to its function of assigning work and did not attract the s. 69 duty.

The Board agreed with the respondent's submission on s. 68 but found a violation of s. 69. In so doing, the Board followed its decision in *Maurice Berlinguette* in which it held that s. 69 is not restricted to acts or omissions in the actual selecting, referring, assigning, designating or scheduling of persons to employment. Moreover, the Board found that the decision to not extend the complainant's leave of absence was inextricably interwoven with the decision to post the complainant's former position and refer the successful bidder to it. There was no evidence of discrimination or bad faith, but the Board found that the union did act arbitrarily, commencing with the Executive Board's decision to recommend that the job be posted if the complainant did not return to work on time. The Board noted that that decision was made before the leave had expired, and was made without any consideration of the variety of legitimate reasons why an individual might be late in returning to work. The Board further noted that after receiving the complainant's letter, the Executive Board proceeded to encourage the membership to vote in favour of depriving the complainant of his highly valued position without providing the complainant with any indication that they intended to do so, and without providing him with an opportunity to argue against such action by detailing the reasons for his lateness (the legitimacy of which was not disputed at the hearing). No satisfactory reason was advanced as to why it was necessary or appropriate for that action to be taken in such a precipitate fashion, which directly and foreseeably created a situation in which a two-third's majority vote would be required to restore the situation which existed before the motion. The parties were granted an opportunity to attempt to agree on appropriate redress for the complainant. *John Bellenger and Toronto Motion Picture Projectionists' Union, Local 173 of the IATSE, and Chuck Morrow*, [1984] OLRB Rep. Aug. 1039.

### **National bargaining beyond the scope of exclusive bargaining rights**

The complainant meat packing company alleged that the respondent union had violated s. 15 of the Act and requested the Board to order it to bargain in good faith. The Board accepted testimony of the long history of national bargaining in the meat packing industry. The parties had bargained on a national basis for many years. Representatives of the corporation and local plants would bargain for the company. Representatives of the International and each local would bargain for the union. When a settlement was reached, each local would conduct a ratification vote. The chairman of the national bargaining committee would tally the results of the votes. An overall majority was required to ratify the settlement. Then a single collective agreement would be executed covering all plants.

The latest collective agreement expired in 1984. The company insisted on bargaining on a

local basis for its Kitchener plant. The Kitchener local of the union wanted to maintain the national bargaining arrangement. The company's final contract offer for settling a collective agreement for the Kitchener plant was rejected in a vote pursuant to s. 40 of the Act. A director of the International recommended rejection because of the employer's refusal to bargain nationally. The Kitchener plant went on strike and remained on strike to the date of the hearing.

The Board recognized that the parties had a mature bargaining relationship (on a national basis) despite there being no statutory foundation for it. The question to be determined was whether the respondent's defence of this relationship violated s. 15 of the Act. This conduct must be assessed within the framework of the Act. The bargaining unit is the critical starting point for collective bargaining. A bargaining unit is a unit of employees to which a trade union's exclusive bargaining rights apply. Its scope can be altered by agreement of the parties. It is, however, circumscribed to the Province of Ontario by the Act. The Board did not have to determine whether the appropriate bargaining unit of the complainant's employees was the plant or all plants in the province because the employer only has one plant in Ontario for which the union held bargaining rights. For the purposes of this complaint, the Board found that the employees of the Kitchener plant constitute the bargaining unit.

The collective agreement was unclear on the bargaining rights held by the international and the local. They traditionally bargained together and together engaged in bargaining which formed the subject matter of this complaint. They refused to negotiate except in the context of national bargaining. The objective of national bargaining covers employees outside the exclusive bargaining rights for the Kitchener plant and beyond the jurisdictional scope of the Act. The respondents were thereby attempting to bargain beyond the legal limits of their exclusive rights. The Board found it inconsistent with the scheme of the Act and unlawful for the respondents to pursue this objective to impasse. It was a major factor in the rejection of the employer's last offer and the subsequent strike. The Board declared that the respondents were in violation of s. 15 of the Act and directed them to return forthwith to the bargaining table to bargain in good faith.

In a dissenting opinion, Board Member Armstrong stated that the employer was undermining a stable collective bargaining relationship on the basis of a technical violation of the Act. He agreed with the factual and legal analysis of the majority but would exercise the Board's discretion to refuse a remedy. *Burns Meats Ltd.*, [1984] OLRB Rep. Aug. 1049.

### **Transfer of licence by insolvent nursing home held to be a sale**

The Board considered both an application under section 63 of the *Labour Relations Act* for a declaration of successor employer and a complaint under section 89 of the Act. The complainant was the bargaining agent for a unit of employees who were employed at Willson Nursing Home in the City of St. Thomas, which facility contained 75 beds. The operator of that home granted a security interest in all the property and assets of the Home to a bank. As a result of the operator's failure to make its scheduled payments, the bank appointed a receiver for the home.

The respondent in the present case had been granted a licence to operate a 41-bed nursing home in a facility in the same city. Just prior to obtaining the licence, the respondent also made an offer to purchase the licence for the Willson Home following the receivership. The Ministry of Health ultimately approved the issuance of a licence to the respondent to purchase the licence to operate the Willson Home on the understanding that all existing residents would be accommodated in a transfer to the respondent's new facility. Upon the completion of the new

facility, the receiver sent notices of termination to the employees at the Willson Home, which were followed by letters from the respondent inviting such employees to apply for employment at the new facility. However, the new employment was to be part-time only, with the hours of work varying from week to week.

The complainant union alleged, *inter alia*, that a sale of a business had occurred between the insolvent company and the respondent through the medium of the receiver, by virtue of a Management Agreement entered into by the parties. As a result, it was submitted that the respondent was bound to the applicant's collective agreement so that the hiring of additional employees to staff the respondent's new facility was an accretion to the bargaining unit. In addition the complainant argued that any question of intermingling subsequent to the opening of the new facility was not relevant and the provisions of section 63(6) did not come into play. Alternatively, the complainant submitted that a sale of a business had occurred upon completion of the transfer of the licence to the respondent and therefore the new facility should have been staffed in accordance with the collective agreement.

The Board reviewed the case of *Riverview Manor*, [1983] OLRB Rep. Sept. 1564, and observed that in the case of a government licensed nursing home, the licence is the essence of the business. Therefore, despite the fact that the assets of the business other than the licence were not actually transferred to the respondent, the actual surrender of the licence by the previous operation of the Willson Home and the respondent's acquisition of an equivalent one, constituted a sale of a business within the meaning of the Act.

The Board also determined whether the respondent was the employer during the period the Management Agreement was in force prior to completion of the licence transaction. The Board reviewed the indicia of the employer-employee relationship originally set out in the case of *York Condominium*, [1977] OLRB Rep. Oct. 642, for the purpose of identifying the party exercising fundamental control over the working lives and environment of the employees in question. Since the Board found that the respondent ran the Willson Home in all material respects on a daily basis and exercised ongoing control over both nursing and staffing policies in the Home, it concluded that the respondent was the employer of the employees at the Home.

The Board then analysed the question of whether there had been a sale of the business by virtue of the arrangement set out in the Management Agreement. Given that the respondent, *inter alia*, was the true employer, retained all revenues generated by the business and assumed responsibility for taxes and insurance, there were strong indications that it came within the expansive definition of "sale" contained in section 63 of the Act. Although the respondent/receiver relationship had many of the attributes of a lease relationship, the Board observed that section 63 contemplated the inclusion of a lease arrangement within the scope of the sale definition. The fixed monthly fee paid by the respondent to the receiver, although characterized by the parties as compensation, was in fact more akin to rent paid by the respondent out of the profits it acquired through control of the business.

On the basis of the foregoing conclusions, the complainant submitted that the respondent was bound by the collective agreement and any additional hirings in the City of St. Thomas were simply accretions to the bargaining unit given the scope clause in the collective agreement. In response, the Board noted that although section 63(2) of the Act provides that a purchaser of a business covered by a collective agreement is bound by that agreement, the section also provides that the Board may declare otherwise. Such declaration may be based on subsections (5) and (6) of



section 63, the sections addressing situations where the character of the business is substantively different following the sale, or where there is substantial intermingling of two businesses operated by a successor employer. The Board rejected the respondent's submission that there had been substantial change sufficient to bring the respondent within the remedial provisions of section 63. However, the Board also rejected the complainant's submission that all employees in the City of St. Thomas were caught by the scope of the collective agreement. The Board noted that where a business covered by a collective agreement is purchased and is not expanded by or integrated with the work provided by a second existing business, the provisions of section 63(6) do not apply, irrespective of where the employees are drawn from. A purchasing employer does not create a situation where the bargaining rights attaching to a single newly acquired business are called into question simply by supplementing the bargaining unit with employees not previously covered by the collective agreement, whether they are newly selected or come from an entirely different location of the employer. The focus of section 63 is on the business, and it is the practical problem of running two integrated businesses, either under two different collective agreements, or one under a collective agreement and one non-union, which prompted the enactment of subsection 63(6). This was, in the Board's view, consistent with the terms of section 63(3) which provides that a trade union continues to be a bargaining agent for employees of the person to whom a business is sold in the like bargaining unit in that business. Therefore, the employees bound by the collective agreement subsequent to a sale are only those employees who were bound by the collective agreement prior to the sale. Section 63 is designed to preserve, but not extend, the *status quo*.

The Board went on to find that there had been an intermingling of employees of the unionized Willson Home and that the respondent's new facility was not covered by a collective agreement. The provisions of section 63(6), therefore, had to be applied, and this was to be done on the basis of comparative numbers. The Board observed that even if all employees of the Willson Home accepted jobs at the new facility, the mix of organized and unorganized employees would be almost evenly divided. Therefore, the Board ordered the taking of a representation vote among all the employees of the Willson Home and the new facility, following the completion of the re-staffing of the two institutions, in a manner consistent with the original Willson Home employees' rights under the collective agreement. The Board noted that although it was unusual for a representation vote to be taken without a freeze being imposed on the list of employees eligible to vote, in light of the parties' desire to avoid continued litigation and incentive to agree upon a basis for re-staffing the Willson Home, it would order the vote in the present case. *Caressant Care Nursing Home of Canada Limited*, [1984] OLRB Rep. Aug. 1060.

### **The extent of successor employer's obligation to retain employees of predecessor**

In a previous proceeding the Board declared that the respondent was a successor employer within the meaning of s. 63. This complaint alleged that the employer was deliberately flouting the law by ignoring the Board declaration, refusing to recognize the applicant union and not implementing any of the provisions of the collective agreement. One of the consequences of this employer conduct was that a large number of the predecessor's employees had been thrown out of jobs they had held for years. The union sought a variety of remedies including reinstatement and compensation.

At the heart of the dispute was the effect of a s. 63 declaration on the rights of employees who were employed by the business sold. The Board examined the structure and purpose of s. 63. The principal thrust of the section is to preserve the labour relations "*status quo*" through the



transfer of a business. It transforms the collective bargaining rights of employees “into a form of ‘vested interest’ which attaches to the business entity and like a charge on property ‘runs with the business’”. The section “abrogates the notion on privity of contract, and virtually eliminates the significance of the separate legal identity of the new owner”. A prospective transferee is expected to investigate and take into account the terms of any agreement a predecessor has made with its employees. The Board will give a liberal interpretation to s. 63, in keeping with its remedial thrust. In determining the possible application of s. 63, the Board will be more concerned with the substance rather than the form of a transaction. Particular attention is paid to the work performed before and after the transfer. If the work remains similar, this supports an inference that s. 63 applies.

The respondent sought to distinguish *Emrick Plastics Inc.* [1982] OLRB Rep. June 861, where the Board held that a successor employer under s. 63 of the Act did indeed have an obligation to retain his predecessor’s employees unless those employees could be laid off or terminated in accordance with the terms of the collective agreement. The Board found that s. 63 preserved the employees’ right to trade union representation, their collective agreement, and, most important, their jobs — so long as those jobs were continued in the successor’s operation.

The respondent argued that *Emrick* was distinguishable because here unlike in *Emrick*, the respondent’s business operated simultaneously with that of the predecessor for one week. The respondent argued that the employees of the predecessor had been laid off and had no right to displace the “pre-existing employees” it had already selected for its new facility. The union argued that the bargaining rights of its members continued through the transaction and that a variety of remedies, including reinstatement and compensation should be granted.

The Board, in a majority decision, pointed out that the predecessor, who was bound by a collective agreement could not discharge its employees without just cause. The impending transaction did not constitute just cause in light of the fact that their work would continue to be done. They were dismissed contrary to the terms of the collective agreement and Act. The respondent “stood precisely in the shoes of its predecessor” when it acquired the business and was thus responsible for the existing obligations under the collective agreement. S. 63 cannot be undermined by a predecessor laying off its employees when their jobs are to be maintained by a successor. Likewise any reorganization by the successor of the work force must be done in accordance with the terms of the collective agreement. The fact that the respondent gradually acquired parts of the predecessor’s business did not affect the rights of the predecessor’s employees. They became employees of the respondent as the transaction unfolded. The newly hired employees had little if any seniority under the collective agreement. If the collective agreement was adhered to, the bulk of the predecessor’s employees would be working at the new facility. The Board held that the respondent had a *prima facie* obligation to retain the predecessor’s employees, who could only be terminated or laid off in accordance with the terms of the collective agreement. *Daynes Health Care Limited and Earl Daynes*. [1984] OLRB Rep. Aug. 1091.

### **Procedure where non-compliance with Board order alleged**

In an earlier hearing, the Board had determined that the respondent had contravened section 66(a) of the *Labour Relations Act* by laying off the complainant before the normal end of the work season because he had enlisted the assistance of his trade union. Subsequent to that decision, the Board was notified by letter from counsel for the complainant that the respondent had failed to pay

the complainant the back wages and interest thereon in the amounts required by the earlier decision. The Board had forwarded that letter along with a covering letter to the respondent outlining the provisions of section 89(6) of the Act providing for the filing of an order in the Supreme Court for enforcement as a judgment or order of that Court.

The Board reviewed the procedure in regard to the provisions of section 89(6). It noted that although the section permits the Board to file its determination in the Supreme Court upon merely being notified of non-compliance, it has generally required a party requesting the filing to prove non-compliance at a hearing convened for that purpose. However, more recently the Board introduced a procedure of advising the respondent of non-compliance and requesting its submissions on point. Where the respondent either agrees that there has been a failure to comply with the Board's decision or does not respond to the allegation, the Board will file its determination in the Supreme Court without any hearing, as it will normally be satisfied that there has been a failure to comply. *Lloyd McHugh & Son Limited*, [1984] OLRB Rep. Aug. 1117.

### **“Penalty” clause in collective agreement held to be enforceable**

The trade union referred a grievance to the Board pursuant to section 124 of the *Labour Relations Act*. In an earlier decision on the same matter, the Board found that the respondent company had failed to meet the time limits stated in the collective agreement for payment of certain sums to an employee welfare plan and union dues deducted from employee wages. The Board had ordered payment of the outstanding amounts but had reserved on the question of enforceability of a “penalty” provision in the collective agreement.

The collective agreement provided for payment of a basic interest charge on the monies the employer failed to remit to the union as required by the agreement. In addition, it provided for a flat penalty fee where an Arbitration Board finds a violation of the aforementioned remittance provisions in the collective agreement. The respondent claimed that these amounts represented penalties for breach of the collective agreement and were therefore legally unenforceable.

The Board reviewed the existing approach of the civil courts to enforcing payment of amounts stipulated for breach of contract. It concluded that such provisions are enforced if the amounts in question constitute a genuine pre-estimate of damages, rather than a penalty. In addition, the Board noted that use of the terms “penalty” or “liquidated damages” is not conclusive of the issue, and that the tribunal must look to the true nature of the stipulation in order to make its determination.

The Board concluded that in the instant case the interest charges were properly viewed as genuine pre-estimates of the costs associated with late payment of money and not as a penalty. The fault fee was considered a conservative estimate of the union's cost in taking a matter to arbitration. The Board therefore ordered the respondent to pay the additional sums to the applicant. *Parlay Construction Ltd.*, [1984] OLRB Rep. Aug. 1120.

### **President of company who also worked as employee not entitled to apply for termination**

The applicant, who had brought the application for a declaration terminating the bargaining rights of the respondent union, was both the President of the company and a working employee paying union dues. The respondent union argued that the applicant was precluded by section 1(3)(b) of the *Labour Relations Act* from being deemed an employee for the purpose of the

application for a declaration of termination under section 57(2)(a) of the Act. The applicant argued that considering that he was an employee under the collective agreement and was required to be a member of the union and pay dues, fairness required that he be accorded the same rights under the Act as are accorded to other employees.

The Board reviewed the cases that had previously considered the rationale for segregating those performing employee functions from those performing managerial tasks. It concluded that since collective bargaining requires an arm's length relationship between the two sides to an agreement to ensure that each is organized in a manner that will best achieve its interests and allow each side to remain untainted by divided loyalties. As the applicant in question performed a managerial role, the Board concluded the terms of section 1(3)(b) of the Act prohibited his access to the provision of section 57(2)(b). *Tradesmen Fabricating Ltd.*, [1984] OLRB Rep. Aug. 1141.

### **Related employer provisions applied to franchise arrangement**

Subsequent to a decision to close down its unprofitable stores, Dominion Stores devised a concept of franchising these stores in order to turn them around. The franchisees entered into a franchise arrangement with Willett Foods Limited, which is a corporate relative of Dominion. The franchisee who was the subject of the applications in question, Penmarkay, while conceding that a sale of a business within the meaning of s. 63 of the Act had occurred, applied for an order terminating the bargaining rights of Local 14 of the Retail, Wholesale and Department Store Union under s. 63(5). The union on the other hand opposed this application and in addition sought a declaration that Dominion, Willett Foods and Penmarkay are related employers within the meaning of s. 1(4) and therefore bound by the Dominion collective agreement.

In the majority decision dated September 24, 1984, the Board declined to grant relief under s. 63(5), noting that there has been no change in the nature of the work performed. In response to the submission that many provisions of the collective agreement designed for a province-wide chain operation are inappropriate when applied to an independent franchisee, the Board stated that a strict literal interpretation of the collective agreement must yield to a commonsense reading that takes account of the change in the employer and the scope of the unit.

Turning to the related employer issue, the Board noted that the dual criteria of "common control or direction" and "associated or related activities" in s. 1(4) have three legislative objectives, namely preservation of bargaining rights, viable collective bargaining structures and facilitating direct dealings between the union and the entity with real economic power over employees. While the Board had no difficulty concluding that Dominion and Willett are under common control, the relationship between Willett and Penmarkay posed difficulties. Examining the dealings between the entities in light of the provisions of this particular franchise agreement, including the obligations and restrictions imposed upon Penmarkay, the Board concluded that Penmarkay is controlled or directed by Willett. Having also found that Dominion, Willett and Penmarkay are engaged in associated or related activities, the Board had to decide whether it should exercise its discretion to make a s. 1(4) declaration.

While it was recognized that its finding of successor employers was sufficient to preserve bargaining rights, the Board concluded that it should, in addition, issue a s. 1(4) declaration for two reasons; namely, to facilitate meaningful collective bargaining between the employees and those exercising real economic control over them and to maintain the consolidated bargaining



structure that existed. The Board declared that Willett and Penmarkay are bound by the Dominion collective agreement. *Penmarkay Foods Limited (Mr. Grocer) et al.*, [1984] OLRB Rep. Sept. 1214.

### **Contract out in response to financial difficulties not a lockout**

The union filed a complaint under section 93 of the *Labour Relations Act* alleging that the respondent employer had threatened and subsequently implemented an unlawful lockout. The respondent ran a retirement home where the complainant had been certified to represent a bargaining unit comprising some 24 service employees. The respondent experienced increasing financial difficulties and unsuccessfully attempted to sell the home back to its previous owners and to obtain concessions from the union. As a result, the respondent decided that subcontracting the work of the employees in the bargaining unit represented by the union was its only alternative. The union was therefore notified of the intention to permanently lay off the entire membership of the bargaining unit.

Pursuant to the collective agreement, the employer requested a meeting with the union in order to consider ways to minimize the adverse effects of the lay-off on the union's members. A meeting was held at which the employer indicated that it was not seeking any concessions from the union and that its decision to sub-contract the work of the union's membership was required strictly as a matter of economic necessity. The complainant was of the view that the respondent was attempting to "bury the bargaining unit", and filed the complaint alleging a lock-out.

The Board reviewed the legal requirements for a lock-out, reiterating the need for both an objective element, involving the withholding of work opportunity, and a subjective element, involving the intention to compel or induce employees to refrain from exercising rights or privileges under the Act, or to agree to changes in terms and conditions of employment. The Board noted that the lay-off of employees does not in itself constitute a lock-out even though the consequences for employees are the same, nor is it sufficient that the employer was motivated by an anti-union animus if he had no intent to preserve the employment relationship of at least some of the employees on terms more favourable to himself. What was critical, in the Board's view, was the specific motive behind the action. In the absence of a specific intent to preserve existing employment relationships on different terms or induce employees to give up established rights, no lock-out would have occurred. The Board noted, however, that such a finding did not preclude a showing of an unfair labour practice.

The Board recognized the difficulty involved in the determination. The Board observed that as a matter of public policy it would be undesirable and contrary to the spirit of labour relations in the province to penalize employers who sought to discuss impending lay-offs with the union by deriving the necessary intent to lock-out from such discussions, while the employer who refused to discuss such matters would be immune from criticism. However, the Board expressed the necessity for caution in these matters, lest employers be encouraged to engage in unfair labour practices under the cloak of economic necessity. In the present case, the subjective element necessary to constitute a lock-out was absent. Even if there were grounds to find that the technical requirements for a lock-out had been met, the Board expressed its reluctance to grant relief for allegedly improper conduct on the employer's part, when it is merely an honest response to the union's inquiry about the action that might be taken to avoid the consequences of the employer's decision. *Preston Springs Garden Retirement Home*, [1984] OLRB Rep. Sept. 1241.



### **Voluntary recognition agreement ratified by employees upheld**

The Applicant applied for a declaration terminating the bargaining rights of the respondent and for certification of itself as bargaining agent for employees working in food-service outlets at Pearson International Airport. The original collective agreements had been negotiated in 1982 by the respondent and Cara Operations Ltd., the latter operating under contract with the Ministry of Transport for operating and food-service outlets. In 1983, however, Cara Operations Ltd. was outbid on the aforementioned contract by the intervener in the present case, York County Quality Foods Ltd. Through negotiations between the respondent and the intervener, a Memorandum of Settlement for a new collective agreement was agreed upon, to be effective from the moment the intervener assumed responsibility for the food-service outlets. Such Memorandum was ratified by the respondent's membership, and a formal collective agreement was signed by the parties.

The applicant was seeking to set aside these agreements under the provisions of section 60(1) of the *Labour Relations Act*. The applicant argued that because the collective agreement entered into by the respondent and the intervener contained a provision requiring membership in the trade union as a condition of employment, it was the requirements of section 46(4) of the Act which had to be met. The applicant argued that the respondent had to demonstrate that at the time the collective agreement was entered into, it had a membership of not less than 55 per cent of the individuals in the bargaining unit. The applicant submitted that the respondent was not entitled to rely on evidence of membership arising out of the previous agreement with Cara as such memberships were themselves products of a compulsory membership clause in a voluntary recognition agreement.

While the Board acknowledged the safeguard intended by section 60, i.e. to ensure that a bargaining agent was not selected at random by the employer, in its view the present case did not raise this concern. Not only was the bargaining agent the agent already representing the employees at the food-service outlets, but final agreement between the respondent and the intervener had been subject to ratification by the employees themselves. The ratification vote was indicative of the will of the majority and the collective agreement in question therefore met the test set out in section 60 of the Act.

With respect to the applicant's submission that the collective agreement must fall as a result of section 46(4), the Board was of the view that the respondent had fairly established to the employer that it had as members in excess of 55 per cent of the proposed bargaining unit. The employer had been provided with copies of the existing collective agreements with Cara. These collective agreements were more than a year old and no longer subject to challenge under section 46(4). The employer had no reason to go behind the face of the collective agreement. The Board felt no compulsion to "save" the employees in the bargaining unit from a collective agreement they had every opportunity to accept or reject.

The applicant also contended that any evidence of membership relied on by the respondent was required by section 73 of the Rules to be filed prior to the "terminal date". The Board stated that this rule was of no application under section 60 or section 46(4), as the relevant evidence is determined as of the date the impugned collective agreement is entered. In addition, section 46(4) appears to require the trade union to satisfy the employer and not the Board that the requisite majority was held at the time the collective agreement was entered into. *York County Quality Foods Ltd.*, [1984] OLRB Rep. Sept. 1340.

### Trade union status and scope of “teacher” exclusion

Humewood House is a children’s residence which provides care for troubled youngsters. Included in its program is a regular day school curriculum which is taught by six teachers employed by the York Board of Education. As a result of a finding of an arbitration board that these teachers were not covered by its collective agreement with the school board under the *School Boards and Teachers Collective Negotiations Act*, O.S.S.T.F. brought the application for certification under the *Labour Relations Act*. When the application first came on for hearing before the Board both parties took the position that these individuals were not teachers as defined by the S.B.T.C.N.A. The Board of Education argued, however, that O.S.S.T.F. was not a trade union within the meaning of s. 1(1)(p) of the L.R.A. The Board was concerned about its jurisdiction in light of s. 2(f) of the Act, which states that the Act does not apply to teachers as defined by the S.B.T.C.N.A. It noted that it was not bound by the arbitration board’s finding that the affected employees were not “teachers” as defined by the S.B.T.C.N.A., and felt that it did not have sufficient factual material on which to decide whether these individuals would be teachers as defined by s. 2(f). Accordingly, it relisted the case for hearing submissions of the parties on the matter. When the parties reappeared before the Board, O.S.S.T.F. argued the position that the individuals it had applied to represent were teachers within the meaning of the S.B.T.C.N.A., while the Board of Education argued that they were not. O.S.S.T.F. maintained its earlier position that it was a trade union within the meaning of s. 1(1)(p) of the L.R.A., while the Board of Education claimed it was not.

On the issue of whether O.S.S.T.F. was a trade union as defined by the L.R.A., the main question was whether O.S.S.T.F. could be a trade union if it included in its membership principals and vice-principals whom the school board argued were “managerial” within the meaning of s. 1(3)(b) of the L.R.A. Assuming, without deciding, that principals and vice-principals exercised “managerial functions” as defined by s. 1(3)(b), a majority of the Board held that their inclusion in O.S.S.T.F.’s membership (which was required by statute) did not preclude a finding that O.S.S.T.F. was a trade union. Within the Board’s jurisprudence there was conflicting authority on this point. The majority felt that the L.R.A. itself did not support the proposition that an association cannot be described as a trade union merely because it includes within its membership persons who exercised managerial functions. The board rejected the contrary reasoning in *Hydro Electric Power Co.* [1971] OLRB Rep. Aug. 501. The majority refused to disturb the Board’s finding in a previous case that the O.S.S.T.F. was a trade union.

On the issue whether the employees affected by the application were teachers within the meaning of the S.B.T.C.N.A., s. 1(m) of that Act defined a teacher as someone who: 1. has appropriate legal qualifications or permission to teach; 2. is employed by a board under a contract in the form prescribed by the regulations under the *Education Act*; and 3. is “employed as a teacher”. It was common ground that the individuals in question were qualified to teach. The Board also found that the second requirement was met. Upon examining the scheme and statutory history of the *Education Act*, the Board was satisfied that these teachers were “permanent teachers” as defined by the Act, and by virtue of s. 230(2) of the Act were entitled to and deemed to have the contract contemplated by paragraph 1(m) of Bill 100. The Board also found that these employees were each “employed as teachers”. In earlier cases, the Board had accepted agreements of the parties then before them, that the S.B.T.C.N.A. applied only to teachers teaching in the regular school year day school programs and not, for example, to summer school teachers. In this case the Board unanimously rejected that interpretation of the S.B.T.C.N.A., and refused to draw any distinction between teachers based on whether or not the programs in which

they were employed could be characterized as “mandatory”, “regular” or “normal”. The Board noted that the language of the S.B.T.C.N.A. did not warrant such a distinction, and that drawing such a distinction would create parallel collective bargaining relationships for teachers, those performing “normal” duties falling under the S.B.T.C.N.A. while those performing “abnormal” duties being covered by the *Labour Relations Act*, thereby creating a “chaotic collective bargaining structure”.

Having found that the employees were “teachers” as defined by the S.B.T.C.N.A., the Board found that by virtue of s. 2(f) thereof the L.R.A. did not apply to the employees affected and accordingly dismissed the application. *Board of Education for the City of York*, [1984] OLRB Rep. 1279.

### **Board distinguishing between hard bargaining and bad faith bargaining**

Canada Trustco is a financial institution with more than 200 branches across Canada and over 6,000 employees. Only two of its branches, at St. Catharines and Cambridge, were organized, both by the complainant union. Through two rounds of negotiations involving the St. Catharines unit, which consisted only of about 15 employees, the union was not successful in making much headway. The employees were not willing to press negotiations to an impasse and the collective agreement signed amounted to little more than an incorporation of the terms and conditions and employment practices of Canada Trustco which existed throughout its operations, with the only gains being with respect to basic clauses such as union security and grievance procedure.

When the Cambridge unit, consisting of some 20 employees, was subsequently organized by the complainant, the employer was willing to meet and bargain and provide information, but insisted on signing a collective agreement on the same lines as the St. Catharines agreement. The union commenced a strike, which proved ineffective to prevent the employer continuing to operate, many employees refusing to participate in the strike. The union likened the employer’s refusal to grant *some* concessions, and its insistence on preserving the *status quo* in the significant areas of bargaining to “Boulwarism” and claimed that the conduct amounted to bad faith bargaining contrary to s. 15 of the *Labour Relations Act*.

Preferring to rely on its own past decisions over U.S. jurisprudence, the Board stated that the bargaining duty under s. 15 does not require particular concessions and does not stipulate the content of collective agreements. The Board saw the facts of this case as a graphic illustration of “predominance of bargaining power as a means of settling the parties’ collective bargaining differences”. The union was seeking to limit the exercise of managerial authority and achieve for the employees, terms and conditions more generous than the employer was willing to pay and that the employer was providing to employees in the rest of its operation. The employer was seeking to maintain its managerial prerogatives and provide levels of remuneration consistent with its own organizational imperatives and its own perceptions of the dictates of the market place. The Board held that under our system of free collective bargaining the ultimate resolution of the differences must rest on the right of parties to resort to economic sanctions in pursuit of their own self-interest as they define it. The ultimate agreement therefore, may have little to do with what an outsider might consider a “fair” settlement, or a just allocation of rewards to capital and labour. The duty to bargain in good faith is not designed to redress an imbalance of bargaining power. A party whose bargaining strength allows it to virtually dictate the terms of the agreement does not thereby bargain in bad faith whether it is the union or the employer that has “the upper hand”. The Board



also noted that the employer was entitled to take into account the relative insignificance of the particular unit in its overall organizational structure.

In the circumstances of this case the Board held that the employer's conduct is properly characterized as "hard bargaining in pursuit of its own self-interest and legitimate business objectives", and that the duty to bargain in good faith had not thereby been contravened. *Canada Trustco Mortgage Company*, [1984] OLRB Rep. Oct. 1356.

### **Who can be "applicants" for termination under s. 57**

The respondent union had two separate but similar collective agreements for the full and part-time employees of the employer. A single application was filed purporting to terminate bargaining rights with respect to both units, two persons being named as applicants. The application was accompanied by a timely petition signed by employees in both units. The union argued that since both persons named as "applicants" were members of the full-time unit, as far as the application related to the part-time unit, no "employee in the bargaining unit" had applied for termination as required by s. 57.

The Board rejected this contention and held that the named applicants are only the nominal applicants. When the Form 17 and the petition are considered together, the applications had been made by employees in both units. Since more than 45% of employees in each unit had signed the petition, votes were directed with respect to both units. *Cara Operations Limited*, [1984] OLRB Rep. Oct. 1378.

### **Local operations of airfreight distributor within Board constitutional jurisdiction**

In this case the union applied for certification in respect of employees of an international airfreight distributor employed at its Malton terminal. The employer opposed the application on the basis that it was either an undertaking or an integral part of an undertaking extending beyond the limits of Ontario, over which the Board did not have constitutional jurisdiction.

The employer delivered freight between Malton and Canadian destinations by purchasing space on commercial air carriers on an "as needed" basis and shipping the freight to the employer's other regional terminals for local delivery. Local delivery was carried out by independent ground carriers under contract with the employer. Deliveries to and from the United States, which constituted most of the business at the employer's Malton terminal, were carried out as follows. Following customs clearance at Malton, freight was transported to Buffalo for U.S. Customs clearance and transshipment by the employer's U.S. parent to its central distribution facility in Ohio. Freight was shipped between Malton and Buffalo by either an air cargo carrier or a trucking company. Both carriers performed this service under contract with the employer. Although both carriers served customers other than the respondent, shipments between Malton and Buffalo carried exclusively the employer's freight. The employer dictated the carriers' schedules and the frequency of their use, but exercised no control over the terms of employment of the carriers' employees. The carriers were entirely dependent on the employer for business on their Malton-Buffalo routes.

The employer sought to distinguish its operation from the Board's "freight forwarding" cases on the ground that the employer operated an international distribution network in which independent carriers over whom the employer exercised control linked the employer's Canadian



operation with its U.S. distribution system. The employer submitted, alternatively, that its Malton operation was an integral part of a federally-regulated undertaking, namely, the carriers' operations between Malton and Buffalo, and therefore attracted federal jurisdiction.

The Board found that the employer's business was a purely local undertaking and that the Board had jurisdiction to hear the application. Although the employer exercised a high degree of "marketplace control" over its carrier companies, it neither owned the physical means of transporting the freight nor directly employed anyone to transport the freight. The employer's relationships with the carriers were therefore purely contractual relationships between a freight forwarder and a commercial carrier. The employer did not attract federal jurisdiction on the alternate ground that it was an integral part of a federally-regulated undertaking because it did not provide services essential to an operation falling under federal jurisdiction. Instead, the federally-regulated undertakings in this case provided services to the employer, who was primarily engaged in the local service of forwarding freight on behalf of its own customers. The carriers involved derived a benefit from the employer's patronage, but they did not acquire from the employer a service so essential to their operations that federal jurisdiction would attach to the employer. *Emery Worldwide*, [1984] OLRB Rep. Oct. 1412.

#### **Failure to inform of crucial meetings breach of s. 68**

A grievor brought a complaint alleging that the respondent union breached section 68 of the *Labour Relations Act* in its handling of the complainant's termination from employment with the respondent employer. The complainant had been terminated by the employer as a result of alleged rudeness to a hotel guest which was the last in a series of such incidents.

Subsequent to the termination, the respondent union prepared a grievance on behalf of the complainant. A meeting between all parties was held on October 28, 1983, to discuss the grievance. As a result of information obtained at that meeting and an independent investigation of the matter by a union steward, the respondent union was advised that there was no merit to the grievance. A union Executive Board meeting was held on November 3, 1983 at which it was decided not to proceed with the grievance, which decision was upheld at a membership meeting on November 8, 1983.

Traditionally, the union's practice in regard to handling a grievance has been to present the matter to the Executive Board and then to the membership at regularly scheduled membership meetings held every two months. A grievor is informed prior to the meetings of his right to attend and present his case. In this case, the respondent union claimed that the complainant had been informed of his right to attend the meetings and that he could write to request permission to attend. The complainant was not informed of the dates of these events, even though they were set by the time he was informed of his right to request an opportunity to attend and address the meetings. The complainant did not inquire as to the dates of the meetings as well. The Executive Board meeting was set for a mere three days after the management decision not to uphold the grievance, taken subsequent to the original meeting of October 28, 1983. Therefore, the complainant would have had to write and seek permission to attend the Executive Board meeting scheduled for only two days later.

The Board concluded that the union had breached section 68 of the Act by not informing the complainant in a proper manner of the two crucial meetings held to consider his case, which he was entitled to attend. The complainant bore no onus to inquire into these matters. The processing

of the case was so fast that no reasonable person could have been expected to take action in writing immediately in order to put his case before the meeting. Subsequent opportunities to change the decision already made are not equivalent to the opportunity to bring the matter to the Executive Board and the membership in the first instance. The failure to fully advise the complainant of the impending meetings amounted to gross negligence constituting arbitrary treatment under section 68.

The remedy in this instance was to provide the complainant with an opportunity to present his case before the Executive Board and the membership. Should the membership decide to support the arbitration, the time limits contained in the collective agreement could not be used as a defence by the employer. *The Four Seasons Hotels Limited*, [1984] OLRB Rep. Oct. 1406.

**Sale provision not applied to grocery store commencing operation on premises of closed down Dominion store.**

The union applied under section 63 of the *Labour Relations Act* for a declaration that the respondent was bound by a collective agreement entered into by the applicant and Dominion Stores Ltd. Approximately six months after Dominion decided to close its store at the location in question, two individuals, who had formerly worked as managers for other Dominion stores took a sublease of the property and purchased the remaining assets that had been abandoned at the premises by Dominion. Upon originally closing the store, Dominion had transferred the vast majority of its assets out of the store, leaving basically fixtures such as refrigerators and counters. The store had remained abandoned through the winter months. Dominion had advertised prior to closing, urging customers to continue to shop at alternative Dominion locations. The new store had opened up with virtually a new staff. The respondents obtained a portion of their merchandise through a Dominion subsidiary.

Counsel for the union argued that a sale of a business had taken place, stressing the public perception of goodwill that ran with the location, the former employment relationship the sublessors had with Dominion, the fact that a Dominion subsidiary supplied merchandise to the new store, and the fact that Dominion sold to the respondents two-thirds of the assets necessary to put the store in operation. Counsel for the respondent contended that no sale of an ongoing concern had occurred but rather there had been an incidental transfer of unwanted assets following a conclusive abandonment of the premises in all respects.

The Board reviewed some of the previous jurisprudence that discussed the effect and intent of section 63 and concluded that the central question to be determined was whether what was sold constituted "a business". Noting that some of the facts suggested that a sale of a business within the meaning of the statute had occurred, the Board ultimately concluded that the circumstances were more indicative of the absence of a sale of a business. While the location was important in the retail industry, location by itself does not constitute a business for purposes of section 63. The total abandonment of the location as a result of Dominion's unilateral decision, the vacancy of the premises for many months with a consequential deterioration of goodwill, the removal of all assets of value to Dominion, the absence of Dominion financing for the respondents and the tenuous link between the respondents' former employment at Dominion and the opening of the new store, all mitigated against finding that the transaction constituted a sale of a business by Dominion to the respondents. *Gilham Foods*, [1984] OLRB Rep. Oct. 1423.

### **Employer not entitled to control structure of union bargaining committee**

The union alleged that the employer had violated section 15 of the *Labour Relations Act* by refusing to negotiate with the union's bargaining committee due to the presence on that committee of an individual who had recently been discharged by the employer. The employer argued that given that the individual in question was no longer an employee and the circumstances of her discharge, it was impossible to bargain with the union so long as she was on the committee.

The Board rejected the employer's argument. The Board stated that the employer is bound to bargain with the union's bargaining committee as structured by the union and that refusal to bargain in the present case constituted bad faith bargaining contrary to the Act. *High Times Publication Ltd.*, [1984] OLRB Rep. Oct. 1448.

### **Board's power to quantify and award damages upon reinstatement**

The Board considered a complaint under section 89 of the *Labour Relations Act* alleging that the four grievors named in the complaint had been dealt with by the respondent company contrary to sections 64, 66 and 70 of the Act. The grievors had been laid off indefinitely by the respondent on the date on which the union filed an application for certification.

Under the reverse onus imposed by section 89(5), the employer had the onus to establish that the reasons given for the lay-offs were the only reasons and also that these reasons were not in any way tainted by an anti-union motive. On reviewing the oral and documentary evidence, the Board concluded that it was more than mere coincidence that the impugned lay-offs occurred on the first business day following the day on which management came to suspect that its employees were engaging in union organizational activity. The respondent had not discharged the burden under section 89(5) of proving that it had not acted contrary to the Act in respect of the lay-offs and, as a result, contraventions of sections 64 and 66 of the Act were found.

The Board directed the respondent to reinstate and compensate the employees for all lost wages and other benefits, with interest. Counsel for the respondent raised an argument that compensation be awarded only to the grievor who had testified during the proceedings and was exposed to cross-examination on the merits. Counsel based his argument on certain arbitral jurisprudence which indicated that if the parties wish an arbitrator to deal only with the question of liability and retain jurisdiction to hold a further hearing for the purpose of quantifying damages, such a request must specifically be made during the hearing on the merits, and the other party must consent to such procedure.

The Board rejected this submission. The Board noted that as master of its own procedure pursuant to section 102(13) of the Act, it had established a practice of affording the parties an opportunity to agree upon the quantum in cases in which the Board awards compensation in an effort to reduce the length and cost of proceedings before the Board. As an incident of the Board's power under section 102(13), this practice does not depend upon consent of the parties or a request by counsel. In addition, no express retention of jurisdiction is necessary in such cases, since section 106(1) of the Act expressly empowers the Board to reconsider or vary its own decisions. No prejudice results to any party, since a complainant may return to the Board for quantification of the award if necessary. The Board also noted that there is no obligation on a grievor or



complainant to testify during a hearing of the merits of a section 89 complaint, since evidence concerning pertinent facts can be placed before the Board through other oral testimony and documentary evidence.

In addition to requiring the respondent to post a notice in the work place to attempt to remedy the psychological impact of the contravention of the Act, the Board included the membership cards signed by the grievors in their calculation of whether employee support of the union was sufficient to avoid a representation vote prior to certification. *Holiday Juice Ltd.*, [1984] OLRB Rep. Oct. 1449.

### **Foreman's reaction to safety complaint violating OHSA**

In this complaint under section 24 of the *Occupational Health and Safety Act*, the complainant, an experienced equipment operator at the employer's underground mine, testified that he had observed unguarded blasting being carried out in contravention of company safety procedures. The failure to post guards around a blast area was normally viewed by the company as a very serious safety offence. After reporting the safety violation, however, the complainant was told by his foreman that the matter would be investigated and action taken "since you complained". Although the foreman reprimanded the blasting crew, the normal discipline was not imposed for the incident. In addition, the foreman disclosed the complainant's name to the blasting crew as the source of the complaint. Shortly afterwards, the complainant was transferred out of seniority to a different level of the mine.

The Board found that though the foreman's action did not in any way reflect the attitude of higher company management, he had created the impression that management and other employees viewed the complainant as a trouble-maker for his objection to an admittedly dangerous violation of company safety rules. In doing so, the foreman had sought to intimidate or coerce the complainant in order to deter him from further acting in compliance with the *Occupational Health and Safety Act*. While the timing of the complainant's transfer was unfortunate, it was not inconsistent with company practice and was not tainted with a desire to intimidate the complainant. In view of the perception of improper motive imparted by the foreman's action, the proper remedy was an order requiring posting of a notice to employees affirming the company's intent to observe the Act. *Inco Metals*, [1984] OLRB Rep. Oct. 1464.

### **Persons under termination notices counted as employees**

During a certification proceeding the employer contended that certain persons should not be considered as employees for purposes of determining the count. While it was common ground that the persons in dispute were at work on the application date, in support of its position, the employer relied on the fact that the persons in question had received termination notices prior to the certification application date, to be effective at a specific future date.

The Board held that its rules for determining whether a person is an employee for purposes of the count such as the 30/30 rule, are only applicable where the person in question was not at work on the application date. The persons in dispute in this case, having been at work on the application date, were held to be employees even though they had received termination notices. *Simpsons Limited*, [1984] OLRB Rep. Oct. 1520.



### **ICI sector displacement application: Effect of voluntary recognition on appropriate bargaining unit**

The respondent employer based in Chatham operated as a general contractor in the industrial, commercial and institutional (ICI) sector of the construction industry. The intervener, Christian Labour Association of Canada, Local 53 (CLAC), held bargaining rights for all the respondent's non-office employees employed in Board area #1 pursuant to a 1963 certificate of the Board. In successive collective agreements since 1967 the employer voluntarily recognized CLAC as bargaining agent for all its non-office employees, without geographical limitation. At the time of the voluntary recognition the employer had no employees working outside Board area #1.

In this case the Carpenters' Union Local 1256 and the Operating Engineers Local 793 made timely applications to displace CLAC in respect of units of all employees in their respective crafts employed outside Board area #1. CLAC opposed the application on the basis that by the mandatory province-wide bargaining provisions of section 144(1) of the Act and CLAC's province-wide voluntary recognition by the employer, the appropriate units for the displacement application were all employees of the respondent employed in Ontario. The applicant unions argued that the appropriate units excluded employees in Board area #1 because the employer's granting of voluntary recognition to CLAC for other areas of the province at a time when it employed no workers outside Board area #1 was improper; or, alternatively, that by granting such recognition, the employer had contributed "other support" to CLAC rendering its collective agreement invalid under section 48 of the Act.

The Board concluded that the appropriate units for the displacement applications were all employees in the respective crafts province-wide. It noted that voluntary geographic extension of bargaining units at a time when no employees were working in the added-on areas is not illegal in itself. Particularly in the geographically mobile construction industry, Board recognition of such a practice is justified on policy grounds. Therefore, CLAC's claim to represent employees province-wide was valid and the applicants were obliged to displace CLAC in the geographical unit set out in the collective agreement. The Board held that this was an appropriate case in which to exercise its discretion under section 6(3) of the Act to allow applicants to "carve out" a craft unit from CLAC's existing all-employee unit. This course was particularly compelling in light of the Board's longstanding practice and the disability upon craft unions against representing ICI-sector employees outside their provincial bargaining designations. *Ben Bruinsma and Sons Ltd.*, [1984] OLRB Rep. Nov. 1542.

### **Application of work refusal provision given liberal interpretation**

The complainant filed a complaint with the Board that he had been fired contrary to s. 24(1) of the *Occupational Health and Safety Act* for refusing to perform unsafe work. The complainant, who worked in a meat processing plant, was asked to assist in the splitting of hogs with a new circular saw. He repeatedly refused to do so as long as another individual (Sam Song) was operating the new saw. He was being asked to hold on to the carcass while Song used the saw to split it. He alleged that Song was unfamiliar with the saw and was too light to be able to control the saw's movements safely.

One of the issues before the Board was whether the complaint was covered by the language of s. 23 of the *OHS Act*. The employer claimed that since the complainant was not asked to "use" or

to “operate” any “equipment, machine, device or thing” and since there was nothing unsafe about the “physical condition” of the workplace, the section did not apply. The Board disagreed and held that the words “use” and “operate” are broad enough to cover a two-man operation involving a piece of equipment and in the circumstances, the complainant, when holding the hog, was involved in the use or operation of the saw. In any event, the Board held that s. 23(b) covered the situation, in that the alleged dangerous physical condition of the workplace was the improperly counterweighted saw being operated by a person who could not control it.

Giving a broad and liberal interpretation to the *OHSA*, which was a piece of remedial legislation, the Board went on to find that the work refusal in question was protected, and that the discharge was in violation of s. 24. *Bill's Country Meats Ltd. Re Gerald P. Blaine*, [1984] OLRB Rep. Nov. 1549.

### **Employer remedial steps not curing effect of prior unlawful action — Section 8 applied**

This was an application for certification in which the union, relying on s. 8, sought certification even though it had less than 45% of employees as members. Upon learning of the union's campaign, the employer engaged in flagrant violations of the Act, including the lay-off of the chief in-plant organizer; the calling of an employee meeting at which threats were made that the plant would close if the union was successful; soliciting employee complaints and suggesting the establishment of an employee committee. An employee committee was subsequently established. The Board found that the employer continued the effects of its earlier violations contrary to s. 64 by permitting the employee committee to meet on company premises during working hours and by negotiating wage increases and improvements in working conditions with it.

Applying the three-fold criteria for certifying a union under s. 8, the Board had no difficulty concluding that there had been violations of the Act and that the union had adequate membership support for collective bargaining. As for the third criterion, the Board was of the opinion that the unlawful employer conduct was such that the true wishes of the employees were not likely to be ascertained.

However, the employer argued that s. 8 was inappropriate in the circumstances of this case in that certain remedial steps it had taken on its own initiative had eliminated the effect of its previous unlawful conduct. The evidence indicated that by way of settlement of an unfair labour practice complaint, the employer reinstated the laid-off union organizer with full compensation. The company, by letters addressed to individual employees, informed them that the employee was reinstated and also that employees were entirely free to select union representation if they so wished. Assurances were given that the plant would not close down if the union was successful. The employer also provided facilities during work hours for the employees to discuss the union without any member of management being present and permitted union representatives to attend. Finally, the employer promised to bargain with the union in good faith if the union was certified.

The Board, in a majority decision, while viewing the employer's attempts to remedy its own unlawful conduct positively, concluded that the attempts had come “too long after the unlawful conduct began”. Noting also that the employer had not addressed the unlawfulness of the employee committee, which continued to exist, the Board found that notwithstanding the employer's attempts, the true wishes of the employees in the bargaining unit were not likely to be

ascertained. A certificate was issued to the union. *Elbertsen Industries Ltd. Re Carpenters Union, Local 1030*, [1984] OLRB Rep. Nov. 1564.

### **Scope of bargaining unit in pre-hearing vote procedure**

The union applied to be certified to represent a bargaining unit of employees employed by two companies at the same address. The union requested that the two companies be treated as a single employer for the purpose of the application and that a pre-hearing representation vote be held among employees in the corresponding voting constituency. The employer contended before the Board that the appropriate bargaining unit included employees of a third associated company operating at a separate location; that a Board determination of the voting constituency was a condition precedent to a pre-hearing vote, and that a hearing into the issue of the proper voting constituency was therefore necessary before a vote could be held.

The Board dismissed the employer's request for a preliminary hearing and ordered a pre-hearing vote in the constituency proposed by the union. The Board reviewed its jurisprudence and stated that it has consistently taken the position that a pre-hearing representation vote should not await formal adjudication of preliminary disputes over description of the bargaining unit. The only requirements for a pre-hearing representation vote are that the Board strike an appropriate voting constituency and satisfy itself that the union has the appearance of 35% membership support in the voting constituency. While it is necessary that the Board identify and delineate preliminary issues before making these determinations, it is not necessary that the issues be resolved, as the holding of a vote does not foreclose a full hearing of disputed issues at a later date. In this case the unit proposed by the union was appropriate for the limited purpose of a pre-hearing vote. *Satin Finish Hardwood Flooring Ltd.*, [1984] OLRB Rep. Nov. 1602.

### **Union strategy at arbitration reasonable; no violation of s. 68**

This was a complaint under s. 89 alleging a breach of section 68, the duty of fair representation. The complaint alleged that the respondent union had conducted itself in an arbitrary fashion. Specifically, it was alleged that the union's representative at the arbitration held in respect of the complainant's discharge failed to appreciate the law applicable to the complainant's case, and thereby precluded a favourable result at arbitration.

The complainant was discharged during her probationary period, which had earlier been extended with union consent, albeit without the complainant's knowledge. The union's international representative handled the case, and having considered the case, adopted as his strategy the argument that the extension of the grievor's probationary period was invalid, and that the test for her discharge was the just cause protection afforded permanent employees. At the arbitration hearing, the parties met at the request of the arbitrator and narrowed the issue to the question of the complainant's status, the union agreeing that the complainant could claim protection under the collective agreement only if she had completed her probationary period. No evidence was called on the merits of the discharge itself.

The complainant argued that the union representative's view of the collective agreement — that probationary employees had no right to grieve a discharge or have it arbitrated — led to arbitrary conduct at the arbitration hearing. The complainant referred the Board to a growing body of case law flowing from the Court's decision *Toronto Hydro-Electric System and CUPE* (1981), 29 O.R. (2d) 18, which established that where a substantive right to grieve exists, procedural



limitations on the exercise of that right were void pursuant to section 44 of the Act. The complainant argued that the collective agreement created a substantive right to grieve, and that, therefore, the union's failure to address the merits of the discharge at arbitration constituted arbitrary conduct and a violation of s. 68. The union replied that in proceeding to arbitration, it had done more than s. 68 required, and asserted that the Board might not second guess the union's strategy at arbitration. The union argued that it reached its decision after careful review, and that decision was not an unreasonable one.

The Board stated that although the union's position would have been stronger had it considered the jurisdictional argument, the fact that it did not do so did not amount to evidence of a "non-caring attitude or a summary approach" that could be considered "reckless, capricious, or grossly negligent". The Board found that the international representative put his mind to the case and made a reasonable decision as to how to proceed, in a manner completely consistent with the skill the Board expected from a union official in his capacity. The complaint was accordingly dismissed. *Smith & Stone (1982) Inc.*, [1984] OLRB Rep. Nov. 1609.

### **Non-unit employees without status to bring termination application**

In this case, employees brought a timely application to terminate the respondent union's bargaining rights for two units, a province-wide ICI-sector unit and a non-ICI unit in Board area #9. On the date of the application the employer had no employees working in the ICI sector. The union contended that the application did not apply to bargaining rights for the ICI unit in the absence of any employees in that unit on the application date. The employer submitted that the Board should decline to follow its practice of describing the bargaining unit in terms of employees performing work in the unit on the date of application. It was urged that such a practice allowed fortuitous results in termination proceedings and unfairly discriminated against employees seeking termination, in that the short open period in termination applications tended to render applicants' error in calculating the voting constituency fatal to the application.

The Board declined to accept the employer's submissions. It observed that in view of the short-term nature of the employment relationship in the construction industry, it was the longstanding practice of the Board to count as employees in a bargaining unit only those employed in the unit on the application date. Nothing in the circumstances of this case justified departure from this policy. The Board therefore dismissed the application with respect to the ICI sector unit and ordered a vote in the non-ICI sector unit. *Stuart Riel Masonry Contractor*, [1984] OLRB Rep. Nov. 1630.

### **Section 68 remedy including referral to arbitration for a second time**

The complainant was a R.N. with 27 years' service with the hospital. As a result of a critical report filed by a charge Nurse (Mrs. D-W) the complainant was suspended pending investigation. At all relevant times, Mrs. D-W was also the local union president. When the union appointed Mrs. D-W to represent the complainant at a meeting scheduled with the employer, the complainant objected and sought the assistance of the employee relations officer of the union and raised the potential conflict of interest of Mrs. D-W. However, Mrs. D-W was not replaced and the meeting went ahead as scheduled. Mrs. D-W attended, but under instructions from the union did not participate other than by taking down notes. At the meeting the complainant was given the choice of resigning or being fired. She was given no opportunity to seek advice, and further was misled into believing that if she resigned, the hospital would not complain to the College of



Nursing. Under pressure, the complainant signed a letter of resignation. The union later advised her to withdraw the letter but the hospital refused. The union filed a grievance but the Board of Arbitration found that it had no jurisdiction since there was a voluntary quit.

On these facts, the complainant alleged that the union had contravened s. 68 and also that the hospital contravened ss. 64 and 66. The union in turn filed a complaint alleging contravention of ss. 64 and 66 by the hospital.

The Board reviewed its jurisprudence on the meaning of s. 68 and stated that, reading the terms “arbitrary, discriminatory or in bad faith” together, there was a prohibition on conduct that was “implausible, summary, reckless or motivated by hostility or subjective ill will”. The Board noted the critical job interest at stake, the right to union representation, the union’s knowledge of the conflict of interest prior to the meeting, the union’s failure to accommodate this conflict of interest, the mistaken belief the complainant was under regarding discipline by the College of Nursing, and the total absence of union representation at the June 9th meeting. The Board was of the view that the union’s conduct was “arbitrary” in that it either failed to “put its mind to the seriousness of the consequences” to the complainant, or if it did do so, it responded in a “summary and careless” fashion. Although no subjective ill will was in evidence, the union’s conduct was also discriminatory in that the complainant was denied union representation to which she was entitled under the Act.

The Board also found a breach of s. 64 by the hospital. Representation within the meaning of s. 64, said the Board, includes representation of employees at the time formal discipline is imposed as well as in the processing of subsequent grievances. “The scheme of our Act is to reverse the imbalance that exists between individual employee and employer”. The employer could not decide who would represent an employee nor could it reasonably impede an employee’s attempt to get union representation. The Board found that the hospital had “intentionally exploited its authority” over the complainant so as to interfere with her right to be represented.

Turning to the remedy, the Board noted that the arbitrator was not asked to rule and did not have authority to rule, on the legality of the actions of the union and the employer with respect to the complainant’s resignation. While the award found the resignation to be voluntary, it was made without knowledge that the letter of resignation was obtained in circumstances where both the union and the employer were in contravention of the *Labour Relations Act*. Thus, the arbitration award which is made “final and binding upon the parties” (s. 44(2)) runs headlong into the Board’s remedial authority which may operate “notwithstanding the provisions of any collective agreement” (s. 89(4)).

Stressing the need to place the complainant in the position she would have been in had it not been for the unlawful conduct of the union and the hospital, the Board concluded that the complainant must be provided with a hearing on the merits of her grievance notwithstanding the finding by the Board of Arbitration. Drawing an analogy with the *Traugott Construction* case, the Board refused to give any force or effect to the letter of resignation obtained through illegal means or to the arbitration award which relied on that letter. Exercising its discretion, the Board directed that the parties appoint their nominees to a board of arbitration and to commence the arbitration process to hear the grievance on its merits, namely, whether there was just cause for the termination of the complainant. *Windsor Western Hospital, Re ONA and Ansia Mordowanec*, [1984] OLRB Rep. Nov. 1643.

### **Taxi broker and driver recruiting companies related employers**

The union applied to be certified to represent a mixed unit of taxi drivers and owner-operators in the employ of three named respondents. The union requested that the three respondents be treated as one employer pursuant to section 1(4) of the Act. One of the three respondents, Beacon Vanier, owned and operated the dispatch system, building facilities and taxi licence plates. The other two respondents, Eastway and Labrie, owned the vehicles and recruited drivers to enter into contracts with Beacon Vanier. Drivers leased vehicles and paid a fee to Eastway or Labrie, who in turn paid a fee to Beacon Vanier. Beacon Vanier prescribed and enforced work rules and disciplined drivers by withholding dispatch services. Drivers engaged by Eastway, however, did not interchange with drivers engaged by Labrie. The contract between the driver and Beacon Vanier was signed on behalf of Beacon Vanier by the principal of the recruiting company. Owner-operators appeared to contract directly with Beacon-Vanier for dispatch services.

The Board found that the three respondents should be treated as a single employer and a certificate should issue. Section 1(4) of the Act may be invoked on a certification application where, as here, the evidence suggests not only related business activities, but joint control over important aspects of the employment relationship. The Board held that whatever the true legal character of the relationships among Beacon Vanier, Eastway, Labrie and the employees, the employees were clearly under the common control and direction of the three respondents. A mixed unit of drivers and owner-operators was an appropriate bargaining unit, as all the evidence before the Board indicated that even if the owner-operators were considered dependent contractors, they were content to be in the same bargaining unit as the drivers. *Beacon Vanier Taxi (1984) Co. Ltd.*, [1984] OLRB Rep. Dec. 1682.

### **Effect of intervening mortgagee in possession upon sale of tavern business**

A tavern business featuring nude entertainment was closed after repeated interventions by by-law enforcement authorities. After the closing, the mortgagee of the premises entered into possession to protect his security. The business was not re-opened for six months. At that time the principal of the respondent purchased the land, building and goods of the previous owner and arranged for transfer of the liquor licence. The respondent repaired and renovated the premises and re-opened business as a tavern featuring a country and western theme. The union that had represented employees of the previous owner applied for a declaration of successor rights under section 63 of the Act on that basis that a "sale of a business" had taken place.

The Board found that there had been a sale of the business and granted the declaration. The Board reviewed its jurisprudence and concluded that neither the interposition of a third party mortgagee between vendor and purchaser, nor a change in the decor, theme or clientele of a tavern operation, nor a gap of several months between closing and re-opening of the premises, made continued representation of the business' employees by the union inappropriate. Here a transfer of the tangible assets and the licence essential to carrying on the business of the tavern had taken place. As the essential character of the business and the nature of the requisite work skills had not substantially changed pursuant to the transaction, it was entirely appropriate that the union's representation rights continue. *Doyles Tavern*, [1984] OLRB Rep. Dec. 1700.

### **Settlement of freeze complaint not enforceable after collective agreement signed**

The union filed an unfair labour practice complaint alleging a number of violations of the Act

including an allegation concerning the re-organizing of nursing work and the removal of the grievor from her position of head nurse after the application for certification was filed. Subsequently, the union was certified. The complaint was settled by the parties, wherein the employer acknowledged that it had violated the Act and agreed *inter alia* to reinstate the grievor in her former position of head nurse and not to alter the wages, terms, etc. of the grievor without the union's consent. The parties then proceeded through conciliation and interest arbitration and executed a collective agreement. After that collective agreement had expired, the employer abolished the position of head nurse and laid-off the grievor. The union filed a complaint, alleging *inter alia* that the employer conduct was a breach of the prior settlement contrary to s. 89(7).

The employer argued that once a collective agreement was executed it became the only source of terms and conditions of employment and that the minutes of settlement were "spent". Further, it was argued that in agreeing not to alter terms, the settlement incorporated the statutory language of the freeze provision. Since the statutory freeze ends when a collective agreement is signed, so too the settlement must cease to operate when an agreement is signed. The union's position in essence was that since the terms of settlement did not contain any limitation as to period of operation, it was binding and enforceable for all time.

The Board noted that the earlier violation of the Act, as far as it concerned the grievor, flowed solely from the freeze provision and that if the Board had made a remedial order, it would have been limited in time and the signing of a collective agreement would have ended the effect of the Board order. That being so, the settlement, if it is to extend beyond such time period, must use clear and express language. In the absence of such language, the Board held that the settlement must be read as being inoperative after the signing of the collective agreement. Consequently, it was held that the settlement is not enforceable under s. 89(7). The majority of the Board also held that this was not an appropriate case to defer to arbitration. *Edward Street Manor Nursing Home*, [1984] OLRB Rep. Dec. 1704.

### **"Spin-off" utility contracting business set up by key employee not a successor or related employer**

In this application for certification the intervening unions claimed to already possess bargaining rights for employees of Jen-Ry Utility on the basis that Jen-Ry was either a successor under section 63, or a related employer under section 1(4), to Pemrow, a company for whom the interveners were certified.

The evidence showed that Jen-Ry was incorporated by a key employee of Pemrow in anticipation of Pemrow's going out of the utility contracting business. For some time while he was still a Pemrow employee, the principal of Jen-Ry bid on and performed small jobs, sometimes renting labour and equipment from Pemrow to do so. This arrangement was tolerated by the principal of Pemrow. When Pemrow ceased carrying on business Jen-Ry purchased a portion of its Pemrow's vehicles and equipment and hired certain of its employees. Jen-Ry ultimately was successful in securing larger contracts of the type formerly performed by Pemrow.

The Board dismissed both of the interveners' claims for relief. Jen-Ry and Pemrow were not related employers because the two operations lacked the element of "common control or direction". The concept of common control or direction contemplates a point of central decision-making control for both entities. The Board concluded that although such central decision-making control can result from a legal relationship between the two entities, from



practical or economic domination of one entity by the other, or from both, there was no such centralized control in this case. The two companies were clearly controlled throughout by their respective principals alone, and the principal of Pemrow had retained no authority or beneficial interest in Jen-Ry.

The Board also held that there had been no “sale of a business” from Pemrow to Jen-Ry within the meaning of section 63 of the Act. Although Jen-Ry had acquired some of the assets of Pemrow, it had not acquired the most significant elements in a utility contracting business, namely, general recognition in the industry and bid-estimating expertise and experience. The Board further found that Pemrow’s utility business was not so completely identified with its key employee that his going into business for himself amounted to a transfer of Pemrow’s “business” to the new company. *Jen-Ry Utility Contracting Co. Ltd.*, [1984] OLRB Rep. Dec. 1724.

### **Notice of a Termination Application in the ICI sector of the Construction Industry**

The Board issued its reasons for an interim decision on a termination application. The hearing was commenced in the absence of any representative of the respondent Local union. A representative of the province-wide Conference of the International Bricklayers and Allied Craftsmen, of which the respondent is a constituent Local, showed up while the hearing was in progress. Counsel for the Conference submitted that as the designated employee bargaining agency pursuant to section 139(1)(a) of the Act, it had a direct legal interest in the proceedings and should have received notice.

Two certificates were issued to the Local pursuant to section 144(2) of the Act. One covered bricklayers and stonemasons and their apprentices in the ICI sector in Ontario. The other covered the same crafts in the local region, excluding the ICI sector. When the employer learned that the former certificate would bind it to the provincial agreement in the ICI sector, it ceased performing work in the sector. The parties had to execute their own collective agreement under the second certificate. If the parties are not bound by a collective agreement, the employees in the bargaining unit can apply to terminate the union’s bargaining rights.

Counsel for the Conference submitted that the bricklayers provincial agreement was not limited to the ICI sector. It applies to all sectors of the construction industry and was, therefore, binding on the employer. The employer signed minutes of settlement, with respect to a grievance under section 124 of the Act, in which it agreed that it was bound by the provincial agreement. Counsel for the Conference argued that since the conference and the International were parties to the agreement, they were entitled to notice of the current proceedings and should be made a party to them. It was further argued that the Local did not get proper notice and, therefore, the hearing should be adjourned to serve proper notice on all parties. Counsel for the employer argued that, whether the Conference was entitled to notice or not, proper notice was served on the Local and since it is a constituent of the Conference, that notice was also proper notice to the Conference. The employer and the applicants argued that the hearing should proceed.

The Board adjourned and ruled as follows. The provincial agreement covers all sectors of the construction industry. The employer was bound by it. The Conference was the employee bargaining agency for all affiliated bargaining agents, to conclude a provincial agreement. A termination declaration in the ICI sector could affect the bargaining rights of all the affiliated bargaining agents. Therefore, they were entitled to notice. Notice to the Conference may be deemed notice to all of them. The proceedings were adjourned so that notice could be served on the International and the Conference. *Stuart Riel Masonry*, [1984] OLRB Rep. July 205.



### **Respondent employing persons to do construction work under government work program held to be construction employer**

The respondent company owned and operated a squash club. At the time of the application for certification the club was being extended and renovated. The respondent retained the services of a construction firm to manager the project. A number of bricklayers working on the project were the subject of the application. Part of the funding necessary for the project came from a federal government program known as “Canada Works”. Under this program, persons receiving unemployment insurance benefits are offered work with a “sponsor” such as the respondent. Participants in this program continued to receive unemployment insurance benefits while receiving additional payments from the “sponsor”. The respondent took the position that it was not an employer in the construction industry; that it was not the employer of the individuals concerned; and further that the persons were not employees in any event.

The Board concluded that while working on the squash club project, the individuals were “employees”. They did meaningful work and received a total amount equivalent to their regular wage rates. The Board also concluded that the federal government was not the employer of these employees. The work benefitted the respondent and not the government, and the government exercised no control over the employees. As between the respondent and the company managing the project, the Board noted that the respondent paid the employees, the contract entered into with the government stated that the respondent was the employer; and the respondent had notified the union that it was the employer. In these circumstances the Board held that the respondent was the employer of the employees. Since it had engaged employees in the construction industry, the respondent was found to be an employer in the construction industry. *Quorum Inc.*, [1984] OLRB Rep. Dec. 1760.

### **TTC drivers refusing to drive across lawful picket line engaging in unlawful strike**

A lawful strike was ongoing against T. Eaton Company and striking employees had set up a picket line at the particular Eaton’s location. The individual respondents, most of whom were bus drivers employed by the TTC, refused to drive their vehicles across the picket line. The union informed the employer (TTC) that the executive board had voted unanimously to endorse the picket lines and that the union members will not cross them. The TTC applied under s. 92 for a declaration of unlawful strike.

The Board endorsing the decision in *Domglass*, which was approved on judicial review, concluded that the definition of “strike” in the Act was broad enough to encompass purely sympathetic action. The Board had evidence before it that in the past the TTC has had a policy of accommodating drivers’ concerns about crossing picket lines by re-routing or having supervisory personnel available. However, it was also established that about a month prior to the incidents in question, the TTC informed the union that it had reconsidered its policy and that it would no

The Board noted that it was not minimizing the union’s concern as to what appeared to the union to be sudden reversal of policy by the TTC. The Board further noted that the union may even be right that the change in policy will exacerbate labour relations problems and damage the amicable relationship that had existed before. However, it was not up to the Board to judge the wisdom of the employer’s decision. The “no-strike ban” is imposed by the Act as a matter of public policy and admits of no exceptions. The Board referred to prior Board decisions where the respondents raised as a defence, a clause in their collective agreement expressly permitting refusal to cross lawful picket lines. In each case, the Board’s response was that it was not possible to

contract out of the ban on strikes and that such clauses were void. Thus, the Board stated that employers' past practice could not stand on a higher footing than an express clause in collective agreement. Consequently, the Board declared that the individual respondents had engaged in an unlawful strike and that the union and its officers had authorized and supported such strike. Cease and desist orders were issued with respect to such conduct. *Toronto Transit Commission*, [1984] OLRB Rep. Dec. 1781.

### **Union Entitled to Copies of Employee Lists**

In this certification application there was disagreement as to the identity of the employer or employers, the employee status of several hundred individuals claimed by the employer to be independent and/or dependent contractors and the appropriate bargaining unit description. A question arose whether the union should be permitted to review and make copies of the lists of employees.

The Board observed that, at the organizing stage, a union does not have access to the employee lists and that it must decide the group of employees it must canvass without the assistance of the lists. In making this decision, it must rely on information provided by its supporters. At the same time, the employer has to propose a unit description it deems to be appropriate; it must decide on what exclusions to seek; and it must determine the employees to be listed in the various employee schedules. These difficult decisions faced by the union and the employer often result in "list problems" and "unit problems".

The Board noted that when a list or unit problem arises, its longstanding practice is to permit the union to review the lists, so it can identify and particularize any challenges to the lists. This has been allowed because there is no policy reason for not doing so and there is nothing in the *Labour Relations Act* which makes employee lists "confidential". That being so, the Board could not see any logic in this case, in permitting a union to review the lists but refusing permission to make copies. Noting that the Board has ample authority to deal with "abuses" of the lists for other purposes, the Board held that the union was entitled to a copy of the employee lists. *Airline Limousine*, [1985] OLRB Rep. Jan. 1.

### **Union relaxing internal procedures in order to secure work for members found not to be in violation of s. 69**

This was a complaint alleging violation of s. 69, the duty of fair referral. The facts, not in dispute, were that the employer had required several men from the respondent union's hiring hall on an emergency basis in order to perform repairs. The respondent referred the required members to the job, but some had not obtained referral slips prior to their commencing work; the hiring hall hours of operation precluded their obtaining the slips before reporting to the job. The complainant was referred to the job, and by letter from the respondent appointed job steward. He arrived late for the job, however, and the employer refused to employ him, or recognize him as job steward.

The complainant took the position that the respondent violated s. 69 by permitting its members to be hired without a referral slip, and in not actively attempting to secure his employment once he was appointed job steward. The respondent argued that strict compliance with the terms of the hiring hall rules might have resulted in work going to non-union contractors in the circumstances of the emergency.

The Board found no evidence that the union had acted in a discriminatory fashion in not attempting to compel the hiring of the complainant, commenting that the complainant was the author of his own misfortune. He did not come forward to explain his lateness in reporting for the job. With respect to the union's practice of giving referral slips, the Board stated that the issue in the case was not whether the respondent violated its constitution in referring members without slips. While deliberate disregard of internal union procedures might be relevant to the complaint, the Board found that the respondent acted reasonably in responding to the employer's request, in safeguarding the employment opportunity for all members by abridging its procedures. Although it was possible that the job to which the complainant was referred was taken by another member hired without a referral slip, the evidence suggested the contrary. The complaint was accordingly dismissed. *Thomas Beck*, [1985] OLRB Rep. Jan. 14.

### **Union's one-year protection after certification reaffirmed**

This was an application for termination of bargaining rights. The respondent union was certified on January 5, 1984, and had commenced legal strike March 22, 1984. The respondent raised a preliminary objection that the application was premature, in that one year had not yet run from time of certification, as provided for in s. 57(1) of the Act. The applicant argued that s. 61(3)(a) modified s. 57(1) and permitted the application after six months had elapsed since the commencement of the strike.

The Board found that s. 61(3)(a) did not modify s. 57(1), for the reasons expressed in *Ontario Hospital Association*, [1980] OLRB Rep. July 1036. Accordingly, the application was dismissed as premature. *Canada Trustco Mortgage Company*, [1985] OLRB Rep. Jan. 43.

### **Sale or related employer provisions not applied to contract out where control and responsibility relinquished**

The applicant union relied on the sale and related employer provisions of the Act in challenging the respondent employer's contracting out arrangement with respect to the dietary and housekeeping services. The promotional material of the contractor indicated that the services it provided would be carried out under the general direction of the licensee, with the contractor remaining ultimately responsible to the licensee. In the circumstances, the applicant alleged that the employer was retaining control over the performance of the contractor's employees so that those persons were in reality the employees of the respondent employer. It was submitted that as a result, the employees of the contractor were replacing bargaining unit employees.

The Board rejected the applicant's contention. The Board initially reviewed previous Board jurisprudence which addressed the question of the degree of control that one employer must have over another employer's employees to justify a finding of actual control on the part of the employer. On the facts of the present case, the Board was satisfied that the contractor had fully assumed responsibility for providing through its own organization, the nursing home's food and housekeeping requirements and retained full responsibility for control of its employees and their working conditions.

The Board also discussed the concept of core and peripheral functions introduced originally in the case of *Kennedy Lodge*, as they applied in the present case. In the former case, the Board had distinguished between the validity of contracting out work that was peripheral to the central



activities of the business, and contracting out the employer's core work in place of having bargaining unit employees performing such work, on the employer's premises, utilizing the employer's equipment and under the employer's control. The Board in the present case did not attempt to further define the terms "core" or "peripheral", but simply observed that the contracting out of the work involved would not offend the sensibilities of the labour relations community as would the contract out of direct nursing care work. However, the Board noted that the issue before the tribunal remains one of intent and that it could find no basis on which to impugn the employer's activities.

The applicant submitted on an alternative basis that a violation of the Act should be found solely on the basis of the effect that a contracting out arrangement would have on the rights of the union and its members. The Board rejected the notion that a non-motive approach to the issue could be adopted. In addition, the Board refused to accept the applicant's submission that a prohibition against contracting out could be inferred from the scope clause of the collective agreement. Absent an express prohibition in the collective agreement against contracting out, no breach of the agreement would be found. *Caressant Care Nursing Home of Canada Limited*, [1985] OLRB Rep. Jan. 50.

#### **Discharge of striking employee based on assault of strikebreaking employee; Board finds no anti-union animus**

This was a complaint under section 89 alleging violation of sections 64 and 66 of the Act, arising out of the discharge of an employee during a legal strike. The employer had continued to operate during the strike, using management strike replacement employees, and one member of the bargaining unit who chose not to support the strike. On one occasion, while crossing the picket line, the strikebreaker was accosted by the complainant who handed him a .22 calibre bullet as he crossed the line, and stated, "your name's on this, you bastard", and then spat in his face. The incident was reported to the employer, who called the police. No criminal charges were laid, but the complainant was terminated from his employment.

The employer sought to justify the termination as based on a threat to an employee's life. The union pointed to the complainant's history of involvement in union affairs, as shop steward, and member of the health and safety and bargaining committees, and invited the Board to draw the inference that the employer's action was motivated by the desire to rid itself of a union activist. The union also argued that the employer's refusal to reinstate or arbitrate the discharge was similarly motivated, and constituted bad faith bargaining in violation of the Act. In the alternative, the union submitted that should no anti-union animus be found, the circumstances of the case called for a finding of a breach of s. 64 based on the Board's decision in *International Wallcoverings*.

The Board rejected the union's complaint, finding that, on the balance of probabilities, the employer's decision to discharge the complainant was not connected to his union activities. The Board noted, further, that this was not a case of clear mistake or discipline clearly out of all proportion to the misconduct in issue, and the *International Wallcoverings* approach was therefore not relevant to the complaint. *John T. Hepburn*, [1985] OLRB Rep. Jan. 75.

#### **Proper Language for Exclusion of Employees Already Represented**

This was a pre-hearing certification application in which the parties agreed to a voting



constituency which contained an exclusion of “persons covered by subsisting collective agreements”. The collective agreements in question were not identified.

The Board stated that parties should consider whether it is desirable to continue the use of this language in excluding persons for whom another trade union holds bargaining rights. The Board observed that that language poses potential difficulties unless the parties specifically designate the excluded employees or at least identify the collective agreements in question. In order to avoid these difficulties the Board concluded that the exclusion should read “employees in the bargaining units for which any trade union held bargaining rights as of January 3, 1985” being the date of application. *Niagara South Board of Education*, [1985] OLRB Rep. Jan. 90.

### **Union agreement to collective agreement limiting right of probationary employees to grieve not in violation of s. 68**

This was a complaint under s. 89 of the Act alleging violation of s. 68. The complainant employee was discharged from his position during his probationary period. The respondent union grieved the dismissal, with the employer taking the position that the matter was not grievable because of the complainant’s probationary status. The matter was settled in lieu of arbitration, and a resignation was substituted for the termination. The complainant then filed a complaint with the Board alleging that the union had violated its duty of fair representation.

It was the complainant’s position that the union violated its duty in negotiating a collective agreement which he interpreted as barring probationers from having access to the grievance procedures upon discharge. The Board noted, however, that it has long rejected the notion that differential treatment of portions of the bargaining necessarily violated section 68. The Board did not interpret the grievance procedure under the collective agreement; rather, the Board noted that if the collective agreement provided the substantive right of just cause protection from discharge, any provision blocking resort to arbitration is void as contrary to s. 44(1), based on the Court’s decision in *Ontario Hydro*. Even assuming that a union could violate s. 68 by agreeing to an illegal clause, the Board observed that the collective agreement was concluded prior to the Court’s decision; no violation could be established where the union could not reasonably have known that the clause was illegal. Finally, the Board cited with approval its decision in *Smith & Stone*, for the proposition that in assessing the quality of representation provided, ignorance of a possible argument was not a matter constituting arbitrariness. The complaint was therefore dismissed. *Jack Widder*, [1985] OLRB Rep. Jan. 134.

### **Application of the Build-Up Principle**

This was a certification application. Among the 114 employees employed by the employer on the application date (August/84) the applicant union had the support of 75% of the employees. However, the employer had firm plans to expand its operation, which would have increased the workforce by a further 130 employees by mid-summer 1985. The employer contended that the Board should not certify the applicant without a vote in the circumstances, but rather should direct a vote to be deferred to a time when a representative number of employees in the projected workforce is employed.

The Board noted that the usual Board policy is to consider 50% of the projected total as sufficiently representative. The present group of 114 employees was slightly less than 50% of the projected total of 244. The evidence indicated that 60 additional employees would be needed to

run the additional production line planned by the employer. However, 30 of those were to be hired as a group to operate the current production line on an overtime basis. The addition of this group would mean that at that time a representative group of 144 out of 244 would be in place. When this has happened, even on the basis of its present membership support, the union would still enjoy 59% of support within the representative group of 144. In other words, when 60% of the projected workforce is employed, the union would still have in excess of 55% of membership support.

In the circumstances, in balancing the right of the present employees to engage in collective bargaining now, with the right of future employees to participate in the selection of the bargaining agent, the Board concluded that the union should be certified without delay and without the need for a vote. *Woodbridge Foam Corporation*, [1985] OLRB Rep. Jan. 139.

### **Unsolicited employer support of which union unaware not making union a “company union”**

In a number of applications filed in 1984, the UFCW sought to displace the incumbent union, CURRE, as bargaining agent for employees at a number of Swiss Chalet restaurants operated by Cara Operations Limited (successor to Foodcorp Limited) and a number of its franchisees. The employers and interveners were party to a subsisting collective agreement. These applications were filed before the “open season” of that agreement. The UFCW sought to establish that the agreement was not a “collective agreement” by virtue of s. 48 of the Act, because CURRE had been the recipient of employer support within the meaning of that section.

The Board found that in 1979, at a time when CURRE had already been certified to represent employees at a number of its locations, Foodcorp Limited had retained a security firm to dispatch undercover agents to seven of its unorganized locations, at which CURRE later won certification. In the guise of employees, these operatives were to promote representation by CURRE. The Board found that such assistance had actually occurred at least at two of the locations to which agents were sent, and held that the employer’s activity had violated s. 64 of the Act.

The Board found no evidence establishing that CURRE was aware that the undercover operatives were anything other than the ordinary pro-union employees they pretended to be, or that CURRE had the slightest inkling that that employer was assisting its organizing campaign. The Board noted that the purpose of ss. 13 and 48 was to protect employees from employer interference in their selection of a bargaining agent. To hold that a union’s ability to be certified or to enter into collective agreements could be destroyed by unsolicited, covert employer behaviour of which the union was totally unaware would be to provide the employer with a potent instrument for effecting just such interference. The Board concluded that the employer’s unlawful interference did not compromise CURRE’s independence so as to attract the application of ss. 13 or 48.

The Board noted that, if the employer interference had come to light before CURRE had been certified at those locations, it would not have granted certification without a vote, at least in the locations where interference had taken place. It considered whether it should now reopen those certification proceedings and direct a vote. The Board concluded that it would not do so in the circumstances of these cases, particularly as the “open season” had intervened and a timely UFCW application had been filed with respect to each location affected by the instant applications, so that employees affected by these applications would have an early opportunity to reconsider representation in light of the events of 1979 without the uncertainty and potential

disruption of established rights which might have been the result of reopening five year old certificates.

In the result the applications in question were dismissed as untimely. *Cabral Foods Inc.*, [1985] OLRB Rep. Feb. 165.

### **Section 8 certification granted where employees terminated during organizational campaign**

This was an application for certification in which the union requested that the Board apply the provisions of section 8. The applicant also complained under s. 89 about the termination of two employees during the organizing drive.

The evidence showed that at a meeting convened on employer premises during working hours, the respondent employer announced that it had lost a contract, and as a result, 10 employees would be laid off. Also announced at the meeting was a standard wage increase for all remaining employees, as well as the introduction of a group insurance plan. The applicant argued that the meeting was before a captive audience, convened in response to its organizational activities.

The Board found that the only plausible explanation for the termination of the grievors was their support for the union, rejecting the employer's evidence that they were no longer necessary because of a slowdown. One of the terminated employees had been active in soliciting members for the union, while the other had questioned the employer during the meeting. The Board found, further, that the meeting itself violated the Act. Having found that the Act was violated, the Board then considered whether the employer's conduct rendered it unlikely that the true wishes of employees could possibly be ascertained in a representation vote. The Board noted that while the union had signed 45% of the bargaining unit members in a one-week period, it had been unable to obtain any further cards after the termination. The Board therefore concluded that the applicant had demonstrated membership support adequate for collective bargaining, and certified the union outright pursuant to s. 8. The complainant employees were reinstated with damages and the Board ordered the posting of a notice. *Benwind Industries*, [1985] OLRB Rep. Feb. 149.

### **Certificate covering new business revoked where sale of business subsequently determined; Board orders displacement vote between applicant union and incumbent certified as bargaining agent for employees of vendor**

The Board had certified the Carpenters for a province-wide unit of employees of Construction P.H. Grager Inc. On learning of the decision, the Labourers requested that the Board reconsider its decision, on the basis that they already held bargaining rights for the affected employees through a prior company, Pierre A. Gratton Construction Inc., which they claimed was either a related or successor employer under the Act. The parties agreed that because the Carpenters application was brought during the last two months of the Labourers province-wide agreement, should the Board find that a related or successor employer relationship existed, the Carpenters' prior application would become a displacement application which would require the holding of a representation vote.

The evidence disclosed that the owner of the Gratton Construction Company had joined forces with two other persons to form the Grager Construction Company Ltd. It was agreed that



the Gratton company would remain dormant, and that the new company would bid on projects. No physical assets changed hands. Nevertheless, the Board found that a sale of business had taken place, noting that the essence of a business in a bid-oriented sector frequently resides in the experience and expertise of its management personnel rather than in physical assets such as tools or a specific location.

The Board went on to find that the business of the Gratton and Grager companies was sufficiently similar to justify the finding of a sale of business; common to the jobs undertaken by Mr. Gratton was a significant element of concrete formwork, work in which the Carpenters and Labourers' jurisdiction overlapped, and which changed the Carpenters' application for certification to a displacement application. The Board therefore ordered that a vote be held between the Carpenters and Labourers. *Construction P.H. Grager, Inc.*, [1985] OLRB Rep. Feb. 233.

### **Terms of displaced union's collective agreement caught by freeze period**

The incumbent union held bargaining rights for the employer's part-time employees and had a collective agreement which expired on June 30, 1984. On June 11, 1984, i.e. prior to the expiry of the incumbent's agreement, the complainant union applied for certification. The complainant won the representation vote and was issued a certificate on August 29, 1984 thereby displacing the incumbent. On August 29, 1984, the complainant gave notice to bargain. The complaints filed before the Board alleged that the employer had contravened s. 79(1) of the Act by failing to pay the unit employees wages and a Christmas bonus, as required by the collective agreement between the displaced union and the employer.

The complainant submitted that the "freeze", commenced by the filing of its application at a time when the collective agreement, was still operative. That is, the certification and due notice to bargain that followed, continued to date the freezing of the terms of that agreement. The respondent contended that the freeze of the terms of the agreement did not continue beyond the date of certification of the complainant. It relied on s. 56(1) which states that "the agreement ceases to operate in so far as it affects such employees" upon certification of another union.

The Board noted that, if the freeze was triggered under s. 79(1) by the incumbent giving notice for renewal, there would be no question that the terms of the agreement would be caught. The Board held that the interposition of a certification application by the complainant union did not change that result. The Board concluded that what is frozen at the commencement of the freeze continues throughout the entire period of the freeze. Section 56(1) does not change the content of the freeze as of the date of certification, but was intended to avoid the chaotic situation of there being two bargaining agents and two collective agreements with respect to the same unit. The employer was found to be in violation of s. 79(1). *Sunnybrook Foods Limited*, [1985] OLRB Rep. Feb. 337.

### **Extent of union's obligation to file grievance on behalf of reluctant grievor**

In this unfair labour practice complaint, the complainant alleged that the respondent union had breached its duty of fair representation by failing to grieve his termination.

The complainant had been discharged following a police investigation in which items of company property were found at his home. The complainant had discussed the matter with the



local union President in the period after the discovery of the items, both before and after the employer's decision to terminate him. The complainant claimed the union President had said the union could and would do nothing for him. The Board accepted the union President's testimony that while he had said the case would be a difficult one, he had told the complainant he should come into see him to discuss the matter further and file a grievance, and had pointed out the time limits for filing. Although the complainant said he would come in, he did not do so and had no further contact with the union for five months. No grievance was filed.

Counsel for the complainant argued that the local President's failure to follow up with the complainant when he failed to come in, violated the union's duty to the complainant and that the union should have taken steps to have a personal meeting with the complainant and ascertain whether he was really aware of his rights or wanted to pursue them.

The Board concluded that s. 68 does not require a union to do more than what was done in the circumstances, holding that "a trade union's duty certainly does not require it to foment grievances on behalf of reluctant grievors." The Board also held that the union had not breached its duty by not seeking an extension of the time for grieving when the complainant finally did express a desire to do so five months later. Given the circumstances, and particularly the absence of any explanation for the delay, it was extremely unlikely that any arbitrator would have extended the time limits. The Board noted that s. 68 does not oblige a union to take extreme or indefensible positions. The complaint was dismissed. *Richard McCormick re International Association of Machinists and Aerospace Workers, Local 1673*, [1985] OLRB Rep. Feb. 296.

### **Picketing held to be in connection with lawful lockout**

Following unsuccessful negotiations to renew collective agreements between the brewery and the union representing its production employees, the brewery locked out its production employees. The lockout was lawful. At the time the brewery was in the process of expanding its production capacity. The expansion program involved addition and extension to its buildings, as well as the installation of a new high speed bottling line and an automated aluminum can line. Two general contractors were engaged on the premises. The "owner-client" brewery was also acting as its own general contractor in respect of certain work. In order to minimize traffic congestion at the site, the brewery had reserved one gate for the exclusive use of construction workers, while the production employees had their own separate gate. When the lockout commenced, pickets appeared at both gates. The construction workers refused to cross the picket line at the construction gate. In these circumstances, the two general contractors on site filed an application under s. 135 of the Act, seeking a prohibition on picketing.

The Board concluded that the main purpose of the picketing was to delay the brewery's expansion program and to put economic pressure on the brewery. The issue for the Board to decide was whether the construction contractors can prevent the brewery's locked out employees from peacefully picketing parts of their own work site. The applicants argued that the recent amendments to ss. 92 and 135 were intended to give the Board wide ranging jurisdiction and discretion to regulate any picketing, (including entirely lawful and peaceful primary picketing) where it leads to an unlawful strike by employees of some other employer. The Board disagreed. The purpose of the amendments were more procedural than substantive. The intention was to ensure that picketing disputes could be channelled through the expedited procedures under ss. 92 or 135 rather than under the more cumbersome route in s. 89. The Board concluded that, whether seen as a limitation on discretion or jurisdiction, s. 76(2) is a clear expression of legislative policy

that activity which may otherwise be unlawful, is not unlawful when done “in connection with a lawful strike or lockout”. This policy was not altered by the amendments to ss. 92 and 135.

Turning to the facts of the case, the brewery was the primary employer with which the union had a legitimate dispute. Although the construction contractors had no direct dispute with the union, they derived a distinct economic advantage from continuing their dealings. If picketing is prohibited, these dealings will continue to their advantage. To the extent that the automation progresses, the construction workers may be contributing to loss of long-term and permanent work opportunities for the locked out employees. The union’s dispute with the primary employer was mainly concerned with long term job security. In these circumstances, the contractors, while not being party to a direct dispute, were economically connected with the primary employer in a contractual and economically advantageous relationship. Therefore, the Board concluded that the picketing in question was “in connection with” the lockout imposed by the brewery, despite the fact that picketing at the construction gate may well cause employees of the contractors to breach their own legal obligation to work and induce them to engage in an unlawful work stoppage. The prohibition on picketing sought was refused. *Bird Construction Company Limited et al.*, [1985] OLRB Rep. Mar. 359.

#### **Voluntarily signed release causing Board not to entertain complaint**

The complainant filed a complaint under section 89 of the *Labour Relations Act* alleging that the respondent had violated sections 64, 66 and 71 of the Act by discharging the complainant from his employment. By way of relief, the complainant sought, *inter alia*, reinstatement in his employment and compensation for all lost wages and benefits.

The respondent replied by alleging that the complainant had accepted monies from the respondent in settlement of all claims relating to the complainant’s employment with the respondent, following the complainant’s consultation with an employment standards officer. The complainant had, in fact, signed a release to that effect. The complainant submitted that upon signing the release at the office of the respondent’s solicitor, he was both unaware of the significance of the release due to the solicitor’s failure to explain the nature of the release, and incapable of fully comprehending its import, due to the complainant’s inadequate knowledge of English. On this basis, counsel for the complainant argued that the release should be disregarded by the Board to the extent that it purported to enjoin the complainant from proceeding with the complaint. Counsel for the respondent argued that the release should result in the dismissal of the present complaint.

The Board observed that while it does not possess a Court’s equitable jurisdiction to set aside the release, its discretion to hear a complaint empowers the Board to ignore the release insofar as it enjoins the complaint. On reviewing the evidence and the credibility of the witnesses, the Board was convinced that the complainant had been substantially aware of the import of the release when he signed it. However, in the Board’s view, this was not in itself determinative of the issue, since the respondent’s conduct was equally relevant due to the unequal nature of the employer-employee relationship, which the Act was designed to redress. In the circumstances of the case, the Board refused to find that the respondent had taken advantage of its superior bargaining position. Rather, it found that the complainant had not been treated unfairly, and could not now take advantage of his own failure to fully read the release prior to signing it. In the result, the Board exercised its discretion by refusing to hear the complaint. *C.E. Jamieson & Co. (Dominion) Limited*, [1985] OLRB Rep. Mar. 375.

### **Employer refusal to bargain with parent union imposing disputed trusteeship not bad faith bargaining**

The intervener union local held bargaining rights for a unit of Diversey Wyandotte's employees. Following negotiations for a collective agreement, the Local requested appointment of a conciliator. At the same time the Local commenced steps to disaffiliate from its parent national union. The national union in response to this action purported to place the Local under trusteeship, but the Local refused to recognize the trusteeship on the ground that it had been imposed without jurisdiction and contrary to the union's constitution. A majority vote of the Local's membership subsequently approved disaffiliation from the national union and the Local commenced an application for judicial review of the declaration of trusteeship.

In the face of the internal union dispute the company secured an adjournment of conciliation proceedings. At the rescheduled conciliation meeting the company proposed that the Local and national union agree to be bound by any settlement ratified by bargaining unit employees, subject to the courts' disposition of the trusteeship question. The national union declined the proposal.

The national union filed a complaint that the company had violated section 15 of the Act by failing to bargain exclusively with representatives of the National, and each union requested a declaration by the Board that the company was obliged to meet and bargain with its particular representative. The company took a neutral position and requested the Board to provide guidance as to which party was entitled to bargain for the unit employees. The Board dismissed the complaint. The company had been willing to make reasonable efforts to reach a collective agreement but had been thwarted by the internal dispute between National and Local. There had been no suggestion that the company had used the dispute as a pretext to avoid collective bargaining. The Board declined to comment on the question of who represented the unit for collective bargaining purposes as any such comment could not bind the parties and final resolution of the matter was properly left for decision by the Courts. *Diversey Wyandotte Inc.*, [1985] OLRB Rep. Mar. 405.

### **Employer's right to lay-off during freeze period**

Shortly after the applicant union applied for certification of employees at the respondent's Oakville store, the respondent announced the termination of a substantial number of employees at its stores, including 18 employees at the Oakville store. While not alleging anti-union motivation, the union complained that the employer actions constituted a violation of ss. 64 and 79(2) of the Act.

Reviewing the rationale and effect of the freeze provision, the Board noted that management has a general right to lay-off employees during a freeze, provided it is not otherwise unlawful. This is so because it is an established employer right to increase or decrease its workforce as conditions dictate. The Board concluded that the fact that the respondent had not previously laid-off employees at Oakville did not mean that it always did not have the right to do so. Therefore, the termination of the sales staff, which was simply a part of a reduction of staff at the Oakville store was held not to be a contravention of s. 79. The Board also found the lay-off of the receiving employees to be a result of a programme designed to consolidate merchandise processing already in place prior to the filing of the application for certification and therefore not a violation.



However, with respect to the lay-off of alterations and cleaning employees, the Board concluded that the lay-offs arose out of a departure from the manner in which the respondent carried on these aspects of its operations. The alterations work previously performed at the Oakville Store was now being performed elsewhere. The cleaning work continues to be done at the Oakville store, but by employees of an outside contractor. This was held to be an alteration of the terms and conditions of employment (or alternatively, a privilege) of the employees in question, and therefore contrary to the statutory freeze.

Dealing with the s. 64 aspect of the complaint, the Board noted that the provision proscribes employer conduct aimed at interfering with union representation. However, it does not make unlawful all employer conduct motivated by business concerns, which incidentally impacts adversely upon a union's ability to represent employees. The lay-offs resulting from the employer's bona fide attempt to cut losses was held not to be a violation of s. 64. *Simpsons Limited*, [1985] OLRB Rep. Mar. 469.

#### **Board functus after issue of s. 124 award; without power to order enforcement of award**

This case concerned a prior Board decision on a section 124 application by the union. The Board had found that the collective agreement had been violated in respect of the travel expense provisions, and made declarations concerning the amount owed each employee. The Board ordered the employer to pay the amounts owing in trust for the employees. Following issuance of that award, the employer paid the full amounts ordered by the Board to the union. The employer subsequently became concerned that the union had not paid the money over to the employees, and asked that the Board convene to compel the union to pay the monies owing to the workers in compliance with the earlier award.

The union made preliminary objections that the Board is without jurisdiction to enforce an award, and furthermore, that the employer has no authority to act on behalf of the employees, even assuming some union wrongdoing. The employer argued that its status to bring the proceedings arose from its role as settlor of the trust for the employees; and as such it has the right to ensure that the terms of the trust are fulfilled. The employer submitted that the Board ought to rectify the alleged misappropriation rather than force individuals to lodge costly and lengthy civil proceedings.

The Board noted that section 44(11) applies to construction industry arbitrations. That section provides that where a party fails to comply with the terms of an arbitration decision, the decision may be filed in the court and become enforceable as a court order. The Act does not give the Board a power to enforce its arbitration awards. The Board's powers under section 124 are limited to dealing with differences or allegations raised in a grievance. As that was done in the earlier award, the Board was now *functus*, and as a creature of statute had no inherent power to enforce terms of its orders. Thus, the employer's application was dismissed without a hearing, for failing to establish a *prima facie* case, without prejudice to any further actions before the Board or in the civil courts. *Skyline Construction Masonry Limited*, [1985] OLRB Rep. March 476.

#### **Minister must appoint arbitrator where request made pursuant to s. 45(1)**

This was a reference to the Board under s. 107 of a question concerning the Minister's authority to appoint an arbitrator under s. 45. The union had requested arbitration under s. 45, but



the request had not arrived at the Office of Arbitration until after the time stipulated in the collective agreement for the submission of grievances to arbitration.

The union argued that the question of timeliness was not a matter going to the Minister's authority to appoint an arbitrator, and submitted that the Board could not properly consider the question of timeliness as it was left to the arbitrator. In the event that the Board concluded that the question of timeliness was pertinent to the Minister's authority, the union proposed to adduce evidence of a past practice modifying the time requirements stipulated in the agreement. The employer's position was that the words "no such request shall be made" required the Minister to consider the timeliness of the request, and that question was to be determined solely on the basis of the collective agreement, without reference to any alleged past practice.

The Board adopted the union's submissions, concluding that the language of s. 45 requires the Minister to appoint the arbitrator where a request is made under subsection 1, which does not address the matter of timeliness. The Board observed that an arbitrator's jurisdiction over such questions was exclusive; moreover, the Board's opinion was consonant with the purpose of s. 45, that being the creation of an expeditious alternative to the arbitration procedures in the collective agreement. Based on its conclusion, the Board declined to answer a related question in the reference, which had become moot. *Spar Aerospace*, [1985] OLRB Rep. March 480.

### **Insisting on blanket prohibition on union activity on employer premises bad faith bargaining**

This was a complaint alleging bad faith bargaining. The allegations stemmed from the following alleged employer conduct: Failure to offer better wages and benefits than offered to non-union employees; insisting on bargaining separately with the different union negotiating committees set up for the different employer locations; pressing the dispute as to the scope of the unit to impasse; and insisting on inclusion of a blanket prohibition on union activity on company premises. It was alleged that the manner of negotiating and the content of the employer's proposals disclosed "surface bargaining".

On the question of wages and benefits, the employer conceded that its proposal would retain for management most of the rights it enjoyed with respect to non-union employees, but denied that its goal was to discourage other employees from joining a union. The company regarded the current wages and benefits fair and competitive and was not inclined to improve these for a group of employees merely because they had chosen to join a union. The Board noted that nothing in the Act requires an employer to agree to wages and benefits for unionized employees that are superior to those being received by non-union employees. Nor does the Act prohibit the employer from taking into account, when formulating its bargaining position, the likelihood that improvements in terms of employment for one group will likely impact on other groups. While offering less than what is enjoyed by non-union employees may be unlawful, such was not the case here.

On the aspect of the complaint dealing with bargaining process, the Board stated that as a general rule insisting on a time-consuming and repetitive bargaining structure with no useful purpose may be unlawful. However, in the case before it, the Board found a rational purpose in the employer's desire to negotiate separately with each union bargaining committee. The union had established differently constituted committees for each of the six locations. Given that the employer was entitled to negotiate a separate agreement for each store, the Board found nothing improper about the employer's attempt to be able to put its position directly to each of the union's six different bargaining committees.

Turning to the employer's insistence on inclusion of a clause prohibiting union activity on employer premises, the Board noted that such a clause would be so broad as to prevent employees from engaging in union activity in non-sales areas during breaks or before or after shifts. The Board viewed the employer's insistence on such a broad prohibition as improper and in breach of s. 15. The employer was directed to amend its proposal accordingly. While the Board recognized that the employer was not entitled to press to impasse its proposals with respect to amendments to bargaining unit descriptions, it was not clear that the employer had done so.

Finally the Board turned to the union's contention that the content of the employer's proposals indicated that it was only engaging in surface bargaining. While the Board did not doubt that the employer would rather not have to deal with the union, it was satisfied that the company was prepared to sign collective agreement, albeit on its own terms. The employer sought to ensure that any agreement it entered into contains terms favourable to it, terms which will retain for management most of the flexibility it currently enjoys and which will not increase its costs. The Board concluded that s. 15 does not preclude a party from taking a firm position in bargaining. The Board noted, however, that its conclusion was not meant to reflect on the "fairness" or otherwise of the bargaining position adopted by the company. Section 15 provides a legal standard against which the Board is to measure the bargaining conduct of the parties, it does not set out a moral standard. Moreover, the Act does not give the Board a general authority to decide the contents of collective agreements.

In the result, the Board found the employer conduct did not constitute a breach of the Act, with one exception. The employer's insistence on a blanket prohibition on union activity on company premises was held to be a breach of s. 15. *T. Eaton Company*. [1985] OLRB Rep. Mar. 491.

## VI COURT ACTIVITY

During the year under review, the Courts dealt with three applications for judicial review. Of these two were dismissed. In the other case the Court of Appeal affirmed the decision of the Divisional Court, which had quashed the Board's decision. An application for leave to appeal the decision of the Court of Appeal to the Supreme Court of Canada was dismissed. In one case, an application to dismiss an application for judicial review because of delay was allowed by the Registrar of the Supreme Court. The High Court allowed the applicant's appeal from the Registrar's ruling and a hearing of the application for judicial review is pending.

During the fiscal year three applications to stay Board proceedings were made and all three applications were dismissed. One motion was made to the High Court for an expedited hearing of an application for judicial review. The motion was also dismissed.

The following are brief summaries of matters involving the Labour Relations Board that went to court during the fiscal year.

***St. Joseph Nursing Home (Rockland) Ltd.***  
**Supreme Court of Ontario, Divisional Court**  
**May 30, 1984; Unreported**

This application for judicial review filed by two employees of the St. Joseph Nursing Home (Rockland) Ltd. arose out of a Board decision refusing to order a new certification vote after the two employees had failed to cast their votes at the first vote ordered by the Board. The applicants raised several grounds for review which included allegations that the Board's decision was contrary to sections 2, 7 and 28 of the *Charter of Rights*.

The Divisional Court dismissed the application, stating that the Board was exercising a discretion it clearly possessed under section 103(5) of the Act. The Court noted that it was not the Court's function to review the correctness of the decision but rather to determine whether the Board had kept within the ambit of its statutory authority.

***Sunsqueeze Juices Inc.***  
**Supreme Court of Ontario, Divisional Court**  
**August 21, 1984; Unreported**

The Board considered a certification application and allegations of unfair labour practices, brought by the union, in one hearing. The Board found that the respondent employer had laid off several workers earlier than the normal seasonal layoff, and laid off one worker who was particularly active in organizing the union, and who would not normally have been laid off, in order to foil an organizing campaign, in violation of sections 64 and 66 of the Act. The employer was also held to have violated sections 64, 66 and 70 by representations made to certain employees concerning the consequences of forming a union. The union had the support of over fifty-five per cent of the employees of the respondent in the appropriate bargaining unit, which was determined by the Board. A certificate was issued. The active organizer was reinstated. Other laid-off employees were compensated for time they would have worked but for the violations of the Act.



The employer sought judicial review on grounds that the Board had exceeded its jurisdiction or denied natural justice by failing to give appropriate weight to evidence tendered by the employer; that the Board had exceeded its jurisdiction in ordering compensation to an employee about whom no evidence was submitted; that the Board had denied a fair hearing by failing to record its proceedings; and that the *Labour Relations Act* is inconsistent with provisions of the *Canadian Charter of Rights and Freedoms*.

An application for a stay of the Board's orders was dismissed. The Court held that the applicant had not established that it would sustain irreparable harm if the stay were refused. The application for judicial review is now pending before the Divisional Court.

***Unlimited Textures Co. Limited***  
**Supreme Court of Ontario, Divisional Court**  
**August 22, 1984; Unreported**

The employer sought judicial review of a Board decision to issue a certificate to a union without a representation vote. The Board had not considered a petition relevant to the exercise of the Board's discretion under section 7(2) of the Act, since it did not cast doubt on the 55 per cent support for the union established by uncontested evidence. Judicial review was sought on the basis that the Board had fettered its discretion under section 7(2) and had interpreted the section so as to contravene section 2 of the *Charter of Rights*.

The employer applied for a stay of the Board's order which was dismissed by the High Court for jurisdictional reasons. However, the Court also indicated, in the alternative, that the criteria for a stay had not been met in any event since a strong *prima facie* case had not been made out. The Board had acted judiciously and there was no merit in the Charter arguments. Following the stay, the application for judicial review was withdrawn.

***Consolidated Bathurst Packaging Ltd.***  
**Supreme Court of Ontario, Divisional Court**  
**September 10, 1984; Unreported.**

The employer applied for judicial review on the basis of a denial of natural justice in that the panel which originally heard the case had discussed the matter with other members and staff of the Board. A motion for a stay of proceedings in the matter was dismissed in January 1984, and a motion to compel inclusion of the Board's draft decision circulated at a Full Board meeting in the Board record filed in court, was also dismissed.

The employer also sought to issue subpoenas to persons identified as being present at the Full Board meeting in order to examine those persons in support of its application. The Board moved to quash the subpoenas.

The Divisional Court granted the Board's motion on September 14, 1984, being of the view that section 109 of the Act was a bar to taking the evidence of the individuals named in the subpoenas. The employer's application to quash the Board's decision was pending at the end of the year under review.

***Burns Meats Ltd.***  
**Supreme Court of Ontario, Divisional Court,**



**September 17, 1984, Unreported.**

The Board had found that the union, in insisting on bargaining on a national basis, was attempting to bargain beyond the legal limits of its exclusive rights and therefore had violated section 15 of the Act. The Board directed the union to return to the bargaining table and bargain in good faith. The Union applied for judicial review alleging that the Board had exceeded its jurisdiction by prohibiting the union from bargaining the aforementioned objective, and had placed an unreasonable interpretation upon section 15 of the Act. The union also contended that the Board decision was contrary to the freedom of association guaranteed by the *Charter of Rights*.

The union's motion for leave to bring the application on short notice before the High Court and its motion for a stay of the Board's decision were dismissed. The application for judicial review is pending.

***Broadway Manor Nursing Home et al.*  
Ontario Court of Appeal  
October 22, 1984; Unreported**

The applicant union filed a displacement application with the Board. The Board dismissed the application, holding it to be untimely on the basis that, by virtue of section 13(b) of the *Inflation Restraint Act* the "open period" had been closed. The union sought judicial review on the basis that the Board had misinterpreted section 13(b) or alternatively on the basis that the *Inflation Restraint Act* was inconsistent with the freedom of association guaranteed by section 2(d) of the *Canadian Charter of Rights and Freedoms*.

The Divisional Court, which heard the application together with two other applications relating to the *Inflation Restraint Act*, allowed the application for judicial review, quashing the decision of the Board and remitting the matter to be dealt with accordingly. One Justice based his decision on a finding that the Board's interpretation of section 13(b) was incorrect. The *Inflation Restraint Act* not being the "home" statute of the Board, he held this was a reviewable error. He found in the alternative that the Act violated the *Charter* and was therefore, to that extent, of no force and effect.

The respondents appealed to the Court of Appeal. The Court held that section 13(b) of the *Inflation Restraint Act* extends the terms and conditions of employment but not the life of a collective agreement. Therefore, the application was not untimely and no *Charter* issue arose.

An application for leave to appeal to the Supreme Court of Canada from the decision of the Ontario Court of Appeal was dismissed.

***3-L Filters Ltd.*  
Supreme Court of Ontario, High Court  
November 19, 1984**

The union filed a grievance under section 124 of the Act that Ontario Hydro had contracted with the applicant in violation of a collective agreement provision obliging Hydro to deal only with subcontractors having an agreement with the union or its affiliates. The applicant sought standing to participate in the hearing before the Board. The Board dismissed the request and issue

its decision by Telepost with reasons to follow. The applicant sought judicial review of the Board decision on the grounds that the Board could not continue before issuing reasons for the decision, and that the decision to refuse standing to the applicant was an error going to jurisdiction. The applicant brought a motion to stay the Board's proceedings pending resolution of the application for judicial review.

The Court held, in dismissing the application for a stay of proceedings, that the determination of any person's right to intervene was a matter within the exclusive jurisdiction of the Board and the Board could not lose such jurisdiction by undertaking to give reasons later that it was not obliged by statute to give at all. Accordingly, the applicant could not demonstrate the strong *prima facie* entitlement to the relief sought that was necessary for a stay. The application for judicial review is pending.

### ***Ontario Hydro***

**Supreme Court of Ontario, Divisional Court  
March 25, 1985; Unreported**

The union filed a grievance under section 124 of the *Labour Relations Act* that the employer had refused to employ the grievor in jobs to which he had been referred by the union's hiring hall, including a job at one of Ontario Hydro's nuclear power plants, on the ground that a previous conviction constituted the grievor a security risk. The Board dismissed the grievance by decision dated February 27, 1984. The union sought judicial review on the basis that the Board had committed errors of law and jurisdiction in admitting certain evidence, relying on extraneous considerations, determining the onus of proof, interpreting the collective agreement, and failing to give effect to the *Charter of Rights and Freedoms*.

By decision dated March 11, 1985 the Registrar of the Supreme Court allowed the employer's motion to dismiss the application for delay in filing supporting documents as required by Rule 68.06. The Divisional Court overturned the Registrar's decision on the ground that the Board is obliged to file a record with the Court in an application for review of a section 124 grievance decision, and that the applicant's time for filing had therefore not commenced to run. Accordingly, the matter presently remains pending before the Divisional Court.

## VII CASELOAD

In fiscal year 1984-85, the Board received a total of 3,509 applications and complaints, an increase of 12 percent over the intake of 3,135 cases in 1983-84. Of the three major categories of cases that are brought to the Board under the Act, applications for certification of trade unions as bargaining agents increased by 32 percent from last year, complaints of contravention of the Act rose by 5 percent, and referrals of grievances under construction industry collective agreements dropped by 10 percent. The total of all other types of cases increased by 21 percent. (Tables 1 and 2).

In addition to the cases received, 534 were carried over from the previous year, for a total caseload of 4,043 in 1984-85. Of the total caseload, 2,866, or 71 percent, were disposed of during the year; proceedings in 236 were adjourned sine die\* (without a fixed date of further action) at the request of the parties; and 941 were pending in various stages of processing at March 31, 1985.

The total number of cases processed during the year produced an average workload of 404 cases for the Board's full-time chairman and vice-chairmen, and the total disposition represented an average output of 287 cases.

### Labour Relations Officer Activity

In 1984-85, the Board's labour relations officers were assigned a total of 2,317 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 57 percent of the Board's total caseload, and included 680 certification applications, 32 cases concerning the status of individuals as employees under the Act, 816 complaints of alleged contraventions of the Act, 745 grievances under construction industry collective agreements, and 44 complaints under the Occupational Health and Safety Act. (Table 3).

The labour relations officers completed activity in 1,961 of the assignments, obtaining settlements in 1,633, or 83 percent. They referred 170 cases to the Board for decisions; proceedings were adjourned sine die in 158 cases; and settlement efforts were continuing in the remaining 356 cases at March 31, 1985.

Labour relations officers were also successful in having hearings waived by the parties in 182, or 65 percent, of 281 certification applications assigned for this purpose.

### Representation Votes

In 1984-85, the Board's returning officers conducted a total of 251 representation votes among employees in one or more bargaining units. Of these votes, 230 were concluded in cases that were either disposed of during the year or in which a final decision closing the case had not been rendered by the Board by March 31, 1985. Of the 230 votes concluded, 170 involved certification applications, 56 were held in applications for termination of existing bargaining rights, and 4 were taken in successor employer applications. (Table 5).

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\* The Board regards sine die cases as disposed of, although they are kept on docket for one year.

Of the certification votes, 130 involved a single union on the ballot and 40 involved two unions. Of the two-union votes, 38 entailed attempts to replace incumbent bargaining agents and 2 involved two unions competing for certification to represent employees in collective bargaining for the first time.

A total of 14,578 employees were eligible to vote in the 230 elections that were concluded, of whom 11,930, or 82 percent, cast ballots. Of those who participated, 51 percent voted in favour of union representation. In the 170 certification elections, 81 percent of the eligible voters cast ballots, with 54 percent of those who participated voting for union representation. In the 130 elections that involved a single union, 78 percent of the eligible voters cast ballots, of whom 53 percent voted for union representation. In contrast, 91 percent of the eligible voters in the two-union elections cast ballots, with 57 percent of the participants voting for union representation.

In the 56 votes in applications for termination of bargaining rights, 88 percent of the eligible voters cast ballots, with only 23 percent of those who participated, voting for the incumbent unions. Of the 161 employees who cast ballots in the elections held in successor employer cases, 94 or 58 percent, voted for union representation.

### **Last Offer Votes**

In addition to taking votes ordered in its cases, the Board's Registrar was requested by the Minister to conduct votes among employees on employers' last offer for settlement of a collective agreement dispute under section 40(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Registrar and field staff are used to conduct these votes because of their expertise and experience in conducting representation votes under the Act.

Of the 26 requests received by the Minister during the fiscal year, votes were conducted in 23 situations, and settlements were reached in the other 3 cases before a vote was taken.

In the 23 votes held, employees accepted the employer's offer in 8 cases by 457 votes in favour to 265 against, and rejected the offer in 15 cases by 569 votes in favour to 1,964 against.

Since the section was introduced in June 1980, a total of 113 requests were made to the Minister up to March 31, 1985. The employer's offer was accepted in 19 cases and turned down in 62 cases. Settlements were reached in 27 cases and the request was withdrawn in 5 cases prior to a vote being conducted.

### **Hearings**

The Board held a total of 1,251 hearings and continuation of hearings in 1,501, or 37 percent of the 4,043 cases processed during the fiscal year. This was a drop of 442 sittings from the number held in 1983-84. Eighty-eight of the hearings were conducted by vice-chairmen sitting alone, compared with 113 in 1983-84.

### **Processing Time**

Table 7 provides statistics on the time taken by the Board to process the 2,866 cases disposed



of in 1984-85. Information is shown separately for the three major categories of cases handled by the Board – certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements – and for the other categories combined.

A median of 39 days was taken to proceed from filing to disposition for the 2,866 cases that were completed in 1984-85, compared with 29 days in 1983-84. Certification applications were processed in a median of 25 days, the same as in 1983-84; complaints of contravention of the Act took 50 days, compared with 34 in 1983-84; and referrals of construction industry grievances required 20 days, compared with 18 in 1983-84. The median time for the total of all other cases increased to 77 days from 47 in 1983-84.

More than 77 percent of all dispositions were accomplished in 84 days (3 months) or less, compared with 87 percent for certification applications, 74 percent for complaints of contraventions of the Act, 85 percent for referrals of construction industry grievances, and 55 percent for the total of all other types of cases. The number of cases requiring more than 168 days (6 months) to complete rose to 289 from 195 days in 1983-84.

### **Certification of Bargaining Agents**

In 1984-85, the Board received 1,148 applications for certification of trade unions as bargaining agents of employees. This was an increase of 277 cases, or 32 percent, over 1983-84. (Tables 1 and 2).

The applications were filed by 64 trade unions, including 33 employee associations. Fifteen of the unions, each with more than 20 applications, accounted for 76 percent of the total filings: Labourers (96 cases), Carpenters (83 cases), Public Employees (CUPE) (67 cases), Food and Commercial Workers (88 cases), Service Employees International (54 cases), International Operating Engineers (38 cases), Teamsters (83 cases), United Steelworkers (50 cases), Retail Wholesale Employees (68 cases), Auto Workers (46 cases), Hotel Employees (70 cases), Ontario Public Service (50 cases), Ontario Nurses Association (26 cases), Ontario Secondary School Teachers (34 cases) and Plumbers (26 cases). In contrast, 51 percent of the unions filed fewer than 5 applications each with the majority making just one application. These unions together accounted for 6 percent of the total certification filings. (Table 8).

Table 9 gives the industrial distribution of the certification applications received and disposed of during the year. Non-manufacturing industries accounted for 78 percent of the applications received, concentrated in construction (252 cases), health and welfare services (146 cases), accommodation and food services (129 cases), retail trade (81 cases), education and related services (77 cases), wholesale trade (45 cases), and mining and quarrying (39 cases). These seven groups comprised 86 percent of the total non-manufacturing applications. Of the 257 applications involving establishments in manufacturing industries, 54 percent were in five groups: food and beverage (44 cases), metal fabricating (41 cases), rubber and plastic products (21 cases), transportation equipment (17 cases), and wood products (16 cases).

In addition to the applications received, 150 cases were carried over from last year, making a total certification caseload of 1,298 in 1984-85. Of the total caseload, 985 were disposed of, proceedings were adjourned in 15 cases, and 298 cases were pending at March 31, 1985. Of the 985 dispositions, certification was granted in 673 cases including 63 in which interim certificates

were issued under section 6(2) of the Act, and 3 that were certified under section 8; 171 cases were dismissed; proceedings were terminated in 7 cases; and 134 cases were withdrawn. The certified cases represented 68 percent of the total dispositions.

Of the 851 applications that were either certified, dismissed or terminated, final decisions in 165 cases were based on the results of representation votes. Of the 165 votes conducted, 122 involved a single union on the ballot; and 43 were held between two unions, of which 41 affected incumbent bargaining agents and 2 involved two applicants. Applicants won in 91 of the votes and lost in the other 74. (Table 6).

A total of 13,069 employees were eligible to vote in the 165 elections, of whom 10,616 or 81 percent cast ballots. In the 91 votes that were won and resulted in certification, 6,126 or 76 percent of the 7,983 employees eligible to vote cast ballots, and of these voters 4,476 or 73 percent favoured union representation. In the 74 elections that were lost and resulted in dismissals, 4,490 or 88 percent of the 5,086 eligible employees participated, and of these only 35 percent voted for union representation.

Small units continued to be the predominant pattern of union organizing efforts through the certification process in 1984-85. The average size of the 673 applications that were certified was 37 employees, compared with 31 in 1983-84. Units in construction certifications averaged 7 employees, compared with 6 in 1983-84 and in non-construction certifications they averaged 46 employees, compared with 40 in 1983-84. Seventy-six percent of the total certifications, including all except 2 in construction, involved units of fewer than 40 employees, and about 38 percent applied to units of fewer than 10 employees. The total number of employees covered by the 673 certified cases increased to 24,997 from 17,043 in 1983-84. (Table 10).

A median time of 24 calendar days was required to complete the 673 certified cases from receipt to disposition. For non-construction certifications the median time was 23 days, and for construction certifications the median time was 22 days. (Table 11).

Ninety percent of the 673 certified cases were disposed of in 84 days (3 months) or less, 81 percent took 56 days (2 months) or less, 64 percent required 28 days (one month) or less, and 45 percent were processed in 21 days (3 weeks) or less. Twenty-two cases required longer than 168 days (6 months) to process, compared with 23 cases in 1983-84.

### **Termination of Bargaining Rights**

In 1984-85, the Board received 155 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions, 29 more than in 1983-84. In addition, 28 cases were carried over from 1983-84.

Of the total cases processed bargaining rights were terminated in 68 cases, 48 cases were dismissed, 22 were withdrawn, proceedings were terminated in 1 case, and 44 cases were pending at March 31, 1985.

Unions lost the right to represent 1,555 employees in the 68 cases in which termination was granted, but retained bargaining rights for 1,587 employees in the 70 cases that were either dismissed or withdrawn.

Of the 116 cases that were either granted or dismissed, dispositions in 55 were based on the results of representation votes. A total of 1,620 employees were eligible to vote in the 55 elections that were held, of whom 1,428 or 88 percent cast ballots. Of those who cast ballots, 334 voted for continued representation by unions and 1,094 voted against. (Table 6).

### **Declaration of Successor Trade Union**

In 1984-85, the Board dealt with 71 applications for declarations under section 62 of the Act, on the bargaining rights of successor trade unions resulting from a union merger or transfer of jurisdiction, compared to 22 in 1983-84.

Affirmative declarations were issued by the Board in 42 cases, 2 cases were withdrawn, proceedings were adjourned sine die in one case, and 26 cases were pending at March 31, 1985.

### **Declaration of Successor or Common Employer**

In 1984-85, the Board dealt with 282 applications for declarations under section 63 of the Act, on the bargaining rights of trade unions at a successor employer resulting from a business sale, or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the Board in 18 cases, 97 cases were either settled or withdrawn by the parties, 23 cases were dismissed, proceedings were terminated or adjourned sine die in 39 cases, and 105 cases were pending at March 31, 1985.

### **Accreditation of Employer Organizations**

Four applications were processed under sections 125 through 127 of the Act for accreditation of employer organizations as bargaining agents of employers in the construction industry. Accreditation was granted in one case affecting 67 firms employing 788 workers; and three cases were pending at March 31, 1985.

### **Declaration and Direction of Unlawful Strike**

In 1984-85, the Board dealt with one case seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. The case was dismissed.

Twelve applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 4 cases, 3 were withdrawn or settled, proceedings were adjourned sine die in 4 cases, and 1 case was pending at March 31, 1985.

Twenty-five applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. Directions were issued in 4 cases, 2 cases were dismissed, 3 were withdrawn or settled, proceedings were terminated or adjourned sine die in 13 cases, and 3 were pending at March 31, 1985.



### **Declaration and Direction of Unlawful Lock-out**

Six applications were processed in 1984-85, seeking declarations under section 93 of the Act against alleged unlawful lock-out by construction employers. One case was dismissed, one was withdrawn, proceedings were terminated in three cases, and one was pending at March 31, 1985.

Nine applications were also processed in seeking directions under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. A declaration was issued in one case, three cases were dismissed, proceedings were terminated in three cases, and two were pending at March 31, 1985.

### **Consent to Prosecute**

In 1984-85, the Board dealt with 14 applications under section 101 of the Act, requesting consent to institute prosecution in court against trade unions and employers for alleged commission of offences under the Act.

Of the 14 applications processed, which included three carried over from the previous year, 11 were disposed of, one was adjourned sine die and two were pending at March 31, 1985. Of the cases disposed of, two were dismissed, seven were withdrawn, and proceedings were terminated in two cases.

### **Complaints of Contravention of Act**

Complaints alleging contraventions of the Act may be filed with the Board for processing under section 89 of the Act. In handling these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

In 1984-85, the Board received 920 complaints under this section, an increase of 5 percent over the 872 filed in 1983-84. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees for union activity in violation of sections 64 and 66 of the Act, illegal changes in wages and working conditions contrary to section 79, and failure to bargain in good faith under section 15. These charges were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

In addition to the complaints received, 153 cases were carried over from 1983-84. Of the 1,073 total processed, 729 were disposed of, proceedings were adjourned sine die in 73 cases, and 271 cases were pending at March 31, 1985.

In 583 or 80 percent of the 729 dispositions, voluntary settlements and withdrawal of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 30 cases, 93 cases were dismissed, and proceedings were terminated in the remaining 23 cases.

In the settlements secured by labour relations officers compensation amounting to about \$358,200 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 30 cases in which violations of the Act were found by the Board, employers and unions were



ordered to pay full compensation to 87 employees for wages and benefits lost in a specified period, and 47 of these employees were also ordered reinstated. Four other employees were reinstated but were not awarded compensation.

In addition, employers in 10 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 3 other cases.

## **Construction Industry Grievances**

Grievances over alleged violation of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 124 of the Act. As with complaints of contraventions of the Act, the Board encourages voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

In 1984-85, the Board received 751 cases under this section, a decrease of ten percent from the 824 filed in 1983-84. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and deduction of union dues, and alleged violation of the subcontracting and hiring arrangements in the collective agreement.

In addition to the cases received, 77 were carried over from 1983-84. Of the total 828 processed, 620 were disposed of, proceedings were adjourned sine die in 99 cases, and 109 cases were pending at March 31, 1985.

In 561 or 90 percent of the 620 dispositions, voluntary settlements and withdrawal of the grievance were obtained by labour relations officers, awards were made by the Board in 34 cases, 16 cases were dismissed, and proceedings were terminated in the remaining 9 cases. (Table 4).

Payments totalling about \$1,657,600 were recovered for unions and employees in the case settled by labour relations officers and those in which Board awards were made.

## **MISCELLANEOUS APPLICATIONS AND COMPLAINTS**

### **Right of Access**

In 1984-85, the Board dealt with six applications in which the union sought access to the employer's property under section 11 of the Act. Three cases were settled, one case was withdrawn, proceedings were adjourned sine die in one case, and one case was pending at March 31, 1985.

### **Religious Exemption**

Ten applications were processed under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemption was granted in one case, five cases were dismissed, proceedings were adjourned sine die in one case, and three cases were pending at March 31, 1985.

### **Early Termination of Collective Agreements**

Twenty-one applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 19 cases, one case was withdrawn, and one was pending at March 31, 1985.

### **Union Financial Statements**

Thirteen complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements of the union's affairs. Consent was granted in one case, one case was dismissed, one was withdrawn, proceedings were terminated in five cases, and five were pending at March 31, 1985.

### **Jurisdictional Disputes**

Thirty complaints were dealt with under section 91 of the Act, involving union work jurisdiction. Three cases were dismissed, 6 were settled or withdrawn, proceedings were terminated in 5 cases, and 16 cases were pending at March 31, 1985.

### **Determination of Employee Status**

The Board dealt with 80 applications under section 106(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Thirty-three cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by the Board in 8 cases, in which 18 of the 21 persons in dispute were found to be employees under the Act. Two cases were dismissed, proceedings were terminated or adjourned sine die in 3 cases, and 34 cases were pending at March 31, 1985.

### **Referrals by Minister of Labour**

In 1984-85, the Board dealt with 22 cases referred by the Minister under section 107 of the Act for opinions on questions related to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under section 44 or 45. Determinations were made in 8 cases, in which the Board declared the Minister's authority to appoint a conciliation officer; 3 cases were settled or withdrawn; proceedings were terminated in 8 cases; and 3 cases were pending at March 31, 1985.

One case was referred to the Board by the Minister under section 139(4) of the Act, concerning the designations of the employee and the employer agencies in a bargaining relationship in the industrial, commercial and institutional sector of the construction industry. The case was pending at March 31, 1985.

### **Trusteeship Reports**

Four statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

### **Occupational Health and Safety Act**

In 1984-85, the Board received 45 complaints under section 24 of the Occupational Health and Safety Act, alleging wrongful discipline or discharge of employees for acting in compliance with the Act. Nine cases were carried over from 1983-84.

Of the total cases processed, 29 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Three cases were granted and 7 were dismissed by the Board, proceedings were terminated or adjourned sine die in 3 cases, and the remaining 12 were pending at March 31, 1985.

### **Colleges Collective Bargaining Act**

Five complaints were dealt with under section 78 of the Colleges Collective Bargaining Act, alleging contraventions of the Act. Two cases were withdrawn or settled, 2 were dismissed, and in one case proceedings were terminated. One case was adjourned sine die, and 27 were pending at March 31, 1985.

Four applications were dealt with under section 82 for decisions on the status of individuals as employees under the Act. A determination was made by the Board in one case, two cases were settled or withdrawn, and proceedings were adjourned sine die in one case.

Statistics on the cases under the Colleges Collective Bargaining Act dealt with by the Board are included in Table 1.

## VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The *Ontario Labour Relations Board Report*, a monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

*A Guide to the Ontario Labour Relations Act*, a booklet explaining in laymen's terms the provisions of the *Labour Relations Act* and the Board's practices. This publication is revised periodically to reflect current law and Board practices. The Guide is also available in French.

*Monthly Highlights*, a publication in leaflet form containing brief summaries of significant Board decisions on a monthly basis. This publication also contains Board notices of interest to the industrial relations community and information relating to new appointments, retirements and other internal developments.

*Pamphlets*, the two pamphlets published by the Board to date ("Rights of Employees, Employers, and Trade Unions" and "Certification by the Ontario Labour Relations Board") have been well received. These pamphlets have been translated into French, Italian and Portuguese. During the year under review the Board published a third pamphlet entitled, "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board." This pamphlet describes unfair labour practice proceedings before the Board and contains instructions on filling out form 58.

All of the Board's publications may be obtained by calling; writing, or visiting the Board's offices. The Ontario Labour Relations Board Report is available on annual subscriptions, presently priced at \$42.00. Individual copies of the report may be purchased at the Government of Ontario Bookstore.



## **IX            STAFF AND BUDGET**

At the end of the fiscal year 1984-85, the Board employed a total of 101 persons on a full time basis. The Board has two types of employees. The Chairman, Alternate-Chairman, Vice-Chairmen and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$4,698,600.00.

## X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1984-85.

- Table 1: Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1984-85
- Table 2: Applications and Complaints Received and Disposed of, Fiscal Years 1980-81 to 1984-85
- Table 3: Labour Relations Officer Activity in Cases Processed, Fiscal Year 1984-85
- Table 4: Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1984-85
- Table 5: Results of Representation Votes Conducted, Fiscal Year 1984-85
- Table 6: Results of Representation Votes in Cases Disposed of, Fiscal Year 1984-85
- Table 7: Time Required to Process Applications and Complaints Disposed of, by Major Type of Case, Fiscal Year 1984-85
- Table 8: Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1984-85
- Table 9: Industry Distribution of Certification Applications Received and Disposed of, Fiscal Year 1984-85
- Table 10: Employees Covered by Certification Applications Granted, Fiscal Year 1984-85
- Table 11: Time Required to Process Certification Applications Granted, Fiscal Year 1984-85

Table 1

# Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1984-85

Caseload		Disposed of, Fiscal Year 1984-85											Pending March 31, 1985
		Received Fiscal Year 1984-85		Disposal							Settled Sine Die		
Type of Case	Total	Pending April 1, 84	Received Fiscal Year 1984-85	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die		910	236
<b>Total</b>	<b>4,043</b>	<b>534</b>	<b>3,509</b>	<b>2,866</b>	<b>915</b>	<b>378</b>	<b>83</b>	<b>580</b>	<b>910</b>	<b>236</b>	<b>941</b>		
Certification of Bargaining Agents	1,298	150	1,148	985	673	171	7	134	—	15	298		
Declaration of Termination of Bargaining Rights	183	28	155	139	68	48	1	22	—	—	44		
Declaration of Successor Trade Union	71	3	68	44	42	—	—	2	—	1	26		
Declaration of Successor Employer or Common Employer Status	282	53	229	145	18	23	7	22	75	32	105		
Accreditation	4	1	3	1	1	—	—	—	—	—	3		
Declaration of Unlawful Strike	1	1	—	1	—	1	—	—	—	—	—		
Declaration of Unlawful Lockout	6	4	2	5	—	1	3	1	—	—	1		
Direction respecting Unlawful Strike	37	2	35	24	8	2	8	3	3	9	4		
Direction respecting Unlawful Lockout	9	5	4	7	1	3	3	—	—	—	2		
Consent to Prosecute	14	3	11	11	—	2	2	7	—	1	2		
Contravention of Act	1,073	153	920	729	30	93	23	242	341	73	271		
Right to Access	6	4	2	4	—	—	—	1	3	1	1		
Exemption from Union Security Provision in Collective Agreement	10	—	10	6	1	5	—	—	—	1	3		
Early Termination of Collective Agreement	21	4	17	20	19	—	—	1	—	—	1		
Trade Union Financial Statement	13	4	9	8	1	1	5	1	—	—	5		
Jurisdictional Dispute	30	11	19	14	—	3	5	5	1	—	16		
Referral on Employee Status	80	17	63	44	8	2	1	17	16	2	34		
(Cont'd)													

(Cont'd)

Table 1 (Cont'd)

Total Applications and Complaints Received, Disposed of and Pending  
Fiscal Year 1984-85

Type of Case	Caseload		Disposed of, Fiscal Year 1984-85							Pending March 31, 1985
	Total	Pending April 1, 84	Received Fiscal Year 1984-85	Total Granted*	Dismissed	Termi- nated	With- drawn	Settled Sine Die	236	
<b>Total</b>	<b>4,043</b>	<b>534</b>	<b>3,509</b>	<b>2,866</b>	<b>915</b>	<b>378</b>	<b>83</b>	<b>580</b>	<b>910</b>	<b>941</b>
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	22	4	18	19	8	—	8	2	1	3
Referral of Construction Industry Grievance	828	77	751	620	34	16	9	111	450	109
Referral from Minister on Construction Bargaining Agency	1	1	—	—	—	—	—	—	—	1
Complaint under Occupational Health and Safety Act	54	9	45	40	3	7	1	9	20	12

\* Includes cases in which a request was granted or a determination made by the Board.



Table 2

### Applications and Complaints Received and Disposed of Fiscal Years 1980-81 to 1984-85

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1980-81	1981-82	1982-83	1983-84	1984-85	Total	1980-81	1981-82	1982-83	1983-84	1984-85
<b>Total</b>	<b>14,991</b>	<b>2,836</b>	<b>2,749</b>	<b>2,762</b>	<b>3,135</b>	<b>3,509</b>	<b>13,427</b>	<b>2,711</b>	<b>2,608</b>	<b>2,445</b>	<b>2,797</b>	<b>2,866</b>
Certification of bargaining agents	5,018	1,152	1,089	758	871	1,148	4,848	1,178	1,101	767	817	985
Declaration of termination of bargaining rights	596	104	98	115	124	155	567	111	78	120	119	139
Declaration of successor trade union or employer	367	55	50	47	22	193	290	54	35	51	19	131
Declaration of common employer status	392	37	36	41	174	104	266	29	30	31	118	58
Accreditation	8	2	1	1	1	3	9	5	—	3	—	1
Declaration of unlawful strike or lockout	22	6	4	3	7	2	21	7	3	2	3	6
Directions respecting unlawful strike or lockout	313	76	59	76	63	39	220	47	34	61	47	31
Consent to prosecute	83	22	17	18	15	11	73	23	10	17	12	11
Contravention of Act	3,861	705	640	724	872	920	3,516	704	622	674	787	729
Referral of construction industry grievance	3,474	517	551	831	824	751	2,866	421	516	577	732	620
Miscellaneous	857	160	204	148	162	183	751	132	179	142	143	155

**Table 3**
**Labour Relations Officer Activity in Cases Processed\***  
**Fiscal Year 1984-85**

Type of Case	Total Cases Assigned	Cases in Which Activity Completed			Referred to Board	Sine Die	Pending
		Total	Number	Percent			
<b>Total</b>	<b>2,317</b>	<b>1,961</b>	<b>1,633</b>	<b>83.3</b>	<b>170</b>	<b>158</b>	<b>356</b>
Certification	680	600	553	92.2	45	2	80
Interim certificate	63	39	36	92.3	2	1	24
Pre-hearing application.	94	75	57	76.0	18	—	19
Other application	523	486	460	94.7	25	1	37
Contravention of Act	816	643	511	79.5	74	58	173
Construction industry grievance	745	657	526	80.1	36	95	88
Employee status	32	25	19	76.0	5	1	7
Occupational Health and Safety Act	44	36	24	66.7	10	2	8

\* Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.

**Table 4**
**Labour Relations Officer Settlements in Cases Disposed of\***  
**Fiscal Year 1984-85**

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
<b>Total</b>	<b>1,433</b>	<b>1,206</b>	<b>84.2</b>
Contravention of Act	729	583	80.0
Construction industry grievance	620	561	90.5
Employee status	44	33	75.0
Occupational Health and Safety Act	40	29	72.5

\* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

**Table 5**
**Results of Representation Votes Conducted\***  
**Fiscal Year 1984-85**

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
<b>Total</b>	<b>230</b>	<b>14,578</b>	<b>11,930</b>	<b>6,042</b>
Certification	170	12,753	10,329	5,616
Pre-hearing cases				
One union	38	4,662	3,632	1,735
Two unions	25	1,848	1,619	790
Construction cases				
One union	1	7	7	1
Regular cases				
One union	91	5,217	4,082	2,390
Two unions	15	1,019	989	700
Termination of Bargaining Rights	56	1,633	1,440	332
Successor Employer	4	192	161	94

\* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

Table 6

## Results of Representation Votes in Cases Disposed of\*

Fiscal Year 1984-85

Type of Cases	Number of Votes			Eligible Votes			All Ballots Cast			Ballots Cast in Favour of Unions		
	In Votes			In Votes			In Votes			In Votes		
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
<b>Total</b>	<b>224</b>	<b>98</b>	<b>126</b>	<b>14,881</b>	<b>8,281</b>	<b>6,600</b>	<b>12,205</b>	<b>6,390</b>	<b>5,815</b>	<b>6,479</b>	<b>4,641</b>	<b>1,838</b>
Certification	165	91	74	13,069	7,983	5,086	10,616	6,126	4,490	6,046	4,476	1,570
Pre-hearing cases												
One union	37	17	20	4,658	1,742	2,916	3,628	1,118	2,510	1,732	788	944
Two union	27	15	12	2,322	1,204	1,118	2,055	1,040	1,015	1,152	849	303
Construction cases												
One union	2	-	2	13	-	13	12	-	12	3	-	3
Regular cases												
One union	83	43	40	4,826	3,787	1,039	3,744	2,791	953	2,249	1,929	320
Two unions	16	16	-	1,250	1,250	-	1,177	1,177	-	910	910	-
Termination of Bargaining Rights	55	5	50	1,610	131	1,489	1,428	125	1,303	334	71	263
Successor Employer	4	2	2	192	167	25	161	139	22	99	94	5

\* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.



Table 7

## Time Required to Process Applications and Complaints Disposed of, by Major Type of Case Fiscal Year 1984-85

Time Taken (Calendar Days)	All Cases			Certification			Section 89			Section 124			All Other		
	Cases			Cases			Cases			Cases			Cases		
	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions
<b>Total</b>	<b>2,866</b>	<b>100.0</b>	<b>985</b>	<b>100.0</b>	<b>729</b>	<b>100.0</b>	<b>620</b>	<b>100.0</b>	<b>532</b>	<b>100.0</b>	<b>532</b>	<b>100.0</b>	<b>107</b>	<b>100.0</b>	<b>107</b>
Under 8 days	49	1.7	6	0.6	9	1.2	20	3.2	14	2.6	14	2.6	11	4.7	11
8-14 days	313	12.6	93	10.1	34	5.9	175	31.5	11	4.7	11	4.7	25	9.4	25
15-21 days	560	32.2	313	41.8	45	12.1	177	60.0	25	9.4	25	9.4	25	9.4	25
22-28 days	289	42.3	168	58.9	57	19.9	39	66.3	25	14.1	25	14.1	25	14.1	25
29-35 days	165	48.0	50	64.0	68	29.2	31	71.3	16	17.1	16	17.1	16	17.1	16
36-42 days	152	53.3	50	69.0	61	37.6	20	74.5	21	21.1	21	21.1	21	21.1	21
43-49 days	204	60.4	46	73.7	98	51.0	16	77.1	44	29.3	44	29.3	44	29.3	44
50-56 days	169	66.3	36	77.4	89	63.2	12	79.0	32	35.3	32	35.3	32	35.3	32
57-63 days	92	69.5	25	79.9	30	67.4	11	80.8	26	40.2	26	40.2	26	40.2	26
64-70 days	80	72.3	22	82.1	16	69.5	11	82.6	31	46.1	31	46.1	31	46.1	31
71-77 days	84	75.3	24	84.6	21	72.4	11	84.4	28	51.3	28	51.3	28	51.3	28
78-84 days	57	77.3	24	87.0	12	74.1	1	84.5	20	55.1	20	55.1	20	55.1	20
85-91 days	46	78.9	12	88.2	16	76.3	7	85.6	11	57.1	11	57.1	11	57.1	11
92-98 days	45	80.4	9	89.1	13	78.1	9	87.1	14	59.8	14	59.8	14	59.8	14
99-105 days	35	81.6	8	89.9	8	79.1	5	87.9	14	62.4	14	62.4	14	62.4	14
106-126 days	87	84.7	19	91.9	18	81.6	20	91.1	30	68.0	30	68.0	30	68.0	30
127-147 days	67	87.0	10	92.9	22	84.6	9	92.6	26	72.9	26	72.9	26	72.9	26
148-168 days	83	89.9	10	93.9	32	89.0	4	93.2	37	79.9	37	79.9	37	79.9	37
Over 168 days	289	100.0	60	100.0	80	100.0	42	100.0	107	100.0	107	100.0	107	100.0	107

Table 8

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1984-85**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed**	Withdrawn
<b>All Unions</b>	<b>1,148</b>	<b>985</b>	<b>673</b>	<b>178</b>	<b>134</b>
<b>CLC* Affiliates</b>	<b>599</b>	<b>512</b>	<b>349</b>	<b>105</b>	<b>58</b>
Air Line Employees	1	—	—	—	—
Aluminum Brick and Glass Workers	2	1	1	—	—
Auto Workers	46	38	29	4	5
Bakery and Tobacco Workers	3	2	1	1	—
Broadcast Employees	1	—	—	—	—
Canadian Brewery Workers	15	15	13	2	—
Canadian Paperworkers	4	4	3	1	—
Canadian Public Employees (CUPE)	67	73	53	8	12
CLC Directly Chartered	5	4	2	2	—
Clothing and Textile Workers	6	5	4	1	—
Communications & Electronics	1	1	1	—	—
Electrical Workers (UE)	7	6	4	1	1
Energy and Chemical Workers	13	13	6	5	2
Food and Commercial Workers	88	61	32	26	3
Glass, Pottery & Plastic Wkrs.	1	—	—	—	—
Graphic Communications Union	5	4	1	2	1
Hotel Employees	70	40	18	8	14
Ladies Garment Workers	3	3	2	1	—
Leather & Plastic Workers	—	2	2	—	—
Machinists	3	4	4	—	—
Molders	7	8	4	3	1
Newspaper Guild	3	1	1	—	—
Office and Professional Employees	7	6	6	—	—
Ontario Public Service Employees	50	34	31	2	1
Public Service Alliance	—	2	2	—	—
Railway Clerks	1	1	1	—	—
Railway, Transport and General Workers	2	2	2	—	—
Retail Wholesale Employees	68	60	39	14	7
Rubber Workers	2	2	—	1	1
Seafarers	1	1	—	—	1
Service Employees International	54	62	43	13	6
Theatrical Stage Employees	3	2	1	1	—
Transit Union (Intl.)	2	2	1	1	—

**Table 8 (Cont'd.)**

Typographical Union	4	3	3	—	—
United Steelworkers	50	46	36	7	3
United Textile Workers	1	1	1	—	—
Woodworkers	3	3	2	1	—

\* Canadian Labour Congress.

\*\* Includes cases that were terminated.

<b>Non-CLC Affiliates</b>	<b>549</b>	<b>47</b>	<b>324</b>	<b>73</b>	<b>76</b>
Allied Health Professionals	3	3	2	1	—
Boilermakers*	7	5	4	—	1
Bricklayers International*	10	7	5	—	2
Carpenters*	83	72	47	15	10
Canadian Educational Workers	1	1	1	—	—
Canadian Operating Engineers	16	17	7	8	2
Canadian Restaurant Employees	1	1	—	—	1
Christian Labour Association	15	11	7	1	3
Electrical Workers (IBEW)*	12	15	14	1	—
Food and Service Workers	2	1	1	—	—
Guards Association	3	3	3	—	—
Headwear Workers	1	1	1	—	—
Independent Local Union	33	29	20	3	6
International Operating Engineers*	38	35	21	5	9
Labourers*	96	88	56	12	20
Multi-Union	1	1	—	—	1
National Council of Canadian Labour	3	3	1	2	—
Ontario Nurses Association	26	25	24	1	—
Ontario Secondary School Teachers	34	3	1	2	—
Painters*	10	10	8	2	—
Plant Guard Workers	5	5	5	—	—
Plumbers*	26	27	20	5	2
Sheet Metal Workers*	17	15	11	3	1
Structural Iron Workers*	12	12	8	—	4
Teamsters	83	72	47	11	14
Textile and Chemical Union	5	5	4	1	—
Textile Processors	6	6	6	—	—

\* These construction unions were reported as CLC (Canadian Labour Congress) affiliates in the 1981-82 report. In April 1982, following suspension by the Congress of its 12 building trades affiliates, the Asbestos Workers, Boilermakers, Bricklayers, Electrical Workers (IBEW), International Operating Engineers, Painters Plasterers, Plumbers and Sheet Metal Workers joined with the Elevator Constructors to form the Canadian Federation of Labour. The Carpenters, Labourers, and Structural Iron Workers have not joined the Federation.

\*\* Includes cases that were terminated.

Table 9

**Industry Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1984-85**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
<b>All Industries</b>	<b>1,148</b>	<b>985</b>	<b>673</b>	<b>178</b>	<b>134</b>
<b>Manufacturing</b>	<b>257</b>	<b>231</b>	<b>169</b>	<b>39</b>	<b>23</b>
Food, beverages	44	42	32	2	8
Tobacco products	—	—	—	—	—
Rubber, plastic products	21	23	18	5	—
Leather industries	3	3	3	—	—
Textile mill products	8	5	3	1	1
Knitting mills	—	—	—	—	—
Clothing industries	6	6	5	1	—
Wood products	16	14	10	2	2
Furniture, fixtures	11	8	4	3	1
Paper, allied products	5	5	3	2	—
Printing, publishing	12	9	7	2	—
Primary metal industries	9	8	6	2	—
Metal fabricating industries	41	36	27	4	5
Machinery, except electrical	13	11	8	1	2
Transportation equipment	17	14	9	4	1
Electrical products	14	12	10	1	1
Non-metallic mineral products	9	7	5	2	—
Petroleum, coal products	—	—	—	—	—
Chemical, chemical products	10	11	8	1	2
Miscellaneous manufacturing	18	17	11	6	—
<b>Non-Manufacturing</b>	<b>891</b>	<b>754</b>	<b>504</b>	<b>139</b>	<b>111</b>
Agriculture	—	—	—	—	—
Forestry	—	—	—	—	—
Fishing, trapping	—	—	—	—	—
Mining, quarrying	6	5	3	2	—
Transportation	39	33	24	3	6
Storage	3	2	2	—	—
Communications	1	1	1	—	—
Electric, gas, water	11	11	7	2	2
Wholesale trade	45	34	23	8	3
Retail trade	81	70	52	14	4
Finance, insurance	8	7	5	2	—
Real Estate	9	12	9	2	1
Education, related services	77	37	27	6	4
Health, welfare services	146	148	120	20	8
Religious organizations	1	2	1	1	—
Recreational services	11	15	8	3	4
Management services	15	11	6	1	4
Personal services	8	9	3	6	—
Accommodation, food services	129	87	34	33	20
Other services	35	30	16	6	8



Table 9 (Cont'd)

**Industry Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1984-85**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
<b>Non-Manufacturing</b>	<b>891</b>	<b>754</b>	<b>504</b>	<b>139</b>	<b>111</b>
Federal government	—	—	—	—	—
Provincial government	—	—	—	—	—
Local government	14	16	7	4	5
Other government	—	—	—	—	—
Construction	252	224	156	26	42

\* Includes cases that were terminated.

Table 10

**Employees Covered by Certification Applications Granted  
Fiscal Year 1984-85**

Employee Size*	Total		Construction**		Non-Construction	
	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees
<b>Total</b>	<b>673</b>	<b>24,997</b>	<b>153</b>	<b>1,022</b>	<b>520</b>	<b>23,975</b>
2-9 employees	257	1,226	128	505	129	721
10-19 employees	126	1,761	16	221	110	1,540
20-39 employees	132	3,668	7	199	125	3,469
40-99 employees	102	6,300	2	97	100	6,203
100-199 employees	32	4,257	—	—	32	4,257
200-499 employees	21	6,037	—	—	21	6,037
500 employees or more	3	1,748	—	—	3	1,748

\* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 735 bargaining units were certified in the 673 applications in which certification was granted.

\*\* Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 156 certified construction industry applications shown in Table 9, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.

**Table 11**
**Time Required to Process Certification Applications Granted\***  
**Fiscal Year 1984-85**

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
<b>Total</b>	<b>673</b>	<b>100.0</b>	<b>520</b>	<b>100.0</b>	<b>153</b>	<b>100.0</b>
Under 8 days	1	0.1	—	—	1	0.7
8-14 days	61	9.2	23	4.4	38	25.5
15-21 days	240	44.9	202	43.3	38	50.3
22-28 days	132	64.5	108	64.0	24	66.0
29-35 days	40	70.4	30	69.8	10	72.5
36-42 days	27	74.4	22	74.0	5	75.8
43-49 days	28	78.6	24	78.7	4	78.4
50-56 days	18	81.3	15	81.5	3	80.4
57-63 days	17	83.8	14	84.2	3	82.4
64-70 days	15	86.0	15	87.1	—	—
71-77 days	14	88.1	11	89.2	3	84.3
78-84 days	16	90.5	10	91.2	6	88.2
85-91 days	8	91.7	4	91.9	4	90.8
92-98 days	8	92.9	6	93.1	2	92.2
99-105 days	6	93.8	6	94.2	—	—
106-126 days	9	95.1	7	95.6	2	93.5
127-147 days	6	96.0	5	96.5	1	94.1
148-168 days	5	96.7	4	97.3	1	94.8
169 days and over	22	100.0	14	100.0	8	100.0

\* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.

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